# No. 10455

## United States
## Circuit Court of Appeals
### For the Ninth Circuit.

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WESTERN VEGETABLE OILS COMPANY, Incorporated, a Corporation,

Appellant,

vs.

SOUTHERN COTTON OIL COMPANY, a Corporation, SOUTHERN PACIFIC COMPANY, a corporation,

Appellees.

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# Transcript of Record

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**Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division**



Rotary Colorprint, 590 Folsom St., San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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808 Kohl Building
San Francisco, California

Attorney for Appellant

A. A. JONES, ESQ.,
A. T. SUTER, ESQ.,

65 Market Street
San Francisco, California

Attorneys for Defendant and Appellee Southern Pacific Co.

MESSRS. DERBY, SHARP, QUINBY & TWEEDT,

1000 Merchants Exchange Building
San Francisco, California

Attorneys for Plaintiff and Appellee Southern Cotton Oil Co.

In the Southern Division of the United States District Court, for the Northern District of California

No. 22373-S

SOUTHERN COTTON OIL COMPANY, a corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; WESTERN VEGETABLE OILS COMPANY, INCORPORATED, a corporation; FIRST DOE COMPANY, a corporation; SECOND DOE COMPANY, a corporation; THIRD DOE COMPANY,

Defendants.

## COMPLAINT FOR DAMAGES

Comes now the plaintiff and for cause of action against the defendants above-named alleges:

I.

Plaintiff at all times herein mentioned was, and now is, a corporation organized and existing under the laws of the State of New Jersey.

II.

Defendant Southern Pacific Company, at all times herein mentioned was, and now is, a corporation organized and existing [1*] under the laws of

*Page numbering appearing at foot of page of original certified Trancript of Record.

the State of Kentucky and doing business in the State of California with a principal office at 65 Market Street, San Francisco, California, as a common carrier of goods for hire.

III.

Defendant Western Vegetable Oils Company at all times herein mentioned was, and now is, a corporation organized and existing under the laws of the State of California.

IV.

Plaintiff is ignorant of the true names of the defendants First Doe Company, a corporation, Second Doe Company, a corporation, and Third Doe Company and therefore refers to them by such fictitious names. Defendants First Doe Company and Second Doe Company are corporations duly organized and existing under the laws of one of the states of the United States. Plaintiff prays that when the true names of said defendants are ascertained, such true names be substituted herein and in all records, papers and proceedings herein in lieu of such fictitious designations.

V.

The matter in controversy exceeds, exclusive of interest and costs, the sum of Three thousand ($3,000.00) Dollars.

VI.

On or about June 18, 1941, plaintiff and defendant Western Vegetable Oils Company, Incor-

porated, entered into a contract in which the plaintiff agreed to buy and the defendant agreed to sell five (5) tank cars of crude coconut oil, each car to contain approximately 60,000 lbs. of oil, the terms of payment being net cash sight draft, shipment to be made in tank cars of defendant Western Vegetable Oils Company during July, 1941. [2]

VII.

That pursuant to said contract, on or about the 18th day of July, 1941 at Oakland, California, defendant Western Vegetable Oils Company loaded a certain tank car, initial HTCX, No. 1743, with 61,560 pounds of crude coconut oil and delivered said tank car and said crude coconut oil in apparent good order to defendant Southern Pacific Company, as a common carrier of merchandise for hire, for transportation to Gretna, Louisiana. Defendant Southern Pacific Company received said tank car and said coconut oil and agreed to transport the same to Gretna, Louisiana, and there to deliver said tank car and coconut oil in like order and condition as when received to the order of Western Vegetable Oils Company pursuant to an Order bill of lading then and there issued to defendant Western Vegetable Oils Company by defendant Southern Pacific Company.

VIII.

That on or about the 21st day of July, 1941, defendant Western Vegetable Oils Company presented to plaintiff its invoice for said shipment of

61,560 pounds of coconut oil and received payment therefor from plaintiff; that defendant Western Vegetable Oils Company thereupon endorsed in blank and delivered to plaintiff said original order bill of lading for said tank car and coconut oil and plaintiff thereby became and at all times herein mentioned was and now is, the holder of said bill of lading and entitled to the delivery and possession of said coconut oil at Gretna, Louisiana.

IX.

Defendants Western Vegetable Oils Company and Southern Pacific Company, and each of them, failed and neglected to deliver said shipment, or any part thereof, to plaintiff at said Gretna, Louisi- [3] ana, or at any other place at all. Plaintiff is informed and believes, and therefore alleges that said shipment of coconut oil leaked from said tank car while in the custody of defendant Southern Pacific Company for transportation as aforesaid.

X.

On or about the 19th day of August, 1941, plaintiff made claim for the value of said coconut oil on each of said defendants, Southern Pacific Company and Western Vegetable Oils Company, Incorporated, but each of said defendants has refused to make payment of said claim to plaintiff and each of said defendants claims that the other defendant is liable for said loss.

XI.

Plaintiff is informed and believes and therefore alleges that the loss of said shipment of coconut oil was due to the fact that defendant Western Vegetable Oils Company, or defendant Southern Pacific Company, or both of said defendants, negligently failed to seal or close the outlet valve of said tank car at time of loading, or negligently failed to make a proper inspection of said tank car before and after loading the same, or negligently failed to inspect or care for said tank car and its contents during transit, or loaded said shipment into a tank car having a defective outlet valve, or loaded said shipment into a car which was not fit or tight for the transportation of a shipment of crude coconut oil.

XII.

By reason of the premises, plaintiff has been damaged in the sum of $3,847.50, no part of which has been paid, and the whole thereof is now due, owing and unpaid from said defendant Western Vegetable Oils Company or from defendant Southern Pacific Company or from both of said defendants to the plaintiff. [4]

Wherefore, plaintiff prays judgment against the defendant Western Vegetable Oil Company or against the defendant Southern Pacific Company, or against both in the sum of $3,847.50, with interest thereon at the rate of seven per cent (7%) per annum from the 18th day of July, 1941, for its

costs of suit herein, and for such other and further relief as in law and justice it may be entitled to receive.

DERBY, SHARP, QUINBY & TWEEDT

Attorneys for Plaintiff. [5]

(Duly Verified.)

[Endorsed]: Filed Nov. 19, 1942. [6]

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[Title of District Court and Cause.]

## ANSWER OF DEFENDANT SOUTHERN PACIFIC COMPANY

Now comes the above-named defendant and answering complaint herein admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraphs I, II and X.

II.

This defendant is without knowledge or information suf- [7] ficient to form a belief as to the truth of the averments therein contained and basing its answer on those grounds denies generally and specifically each and every allegation contained in paragraphs III, IV, V, VI and VIII.

III.

Answering paragraph VII of plaintiff's complaint, this defendant denies that, pursuant to said contract or any contract, defendant Western Vege-

table Oils Company, Incorporated, delivered to this defendant that certain tank car, initial HTCX, No. 1743, loaded with 61,560 pounds of crude coconut oil, and denies that it agreed to deliver said tank car and coconut oil at Gretna, Louisiana, or at any place to the order of the Western Vegetable Oils Company, Incorporated, or to anyone in like order or condition as when received or in any manner whatsoever other than in accordance with the terms and conditions of a uniform order bill of lading approved by the Interstate Commerce Commission issued to defendant Western Vegetable Oils Company, Incorporated, by defendant Southern Pacific Company, a copy of which is annexed hereto, marked Exhibit "A" and to which reference is hereby made, and pursuant to the rates, rules and regulations contained in this defendant's tariffs duly posted, published and on file with the Interstate Commerce Commission.

IV.

This defendant denies each, every and all of the allegations contained in paragraph IX of plaintiff's complaint except that this defendant admits that the contents of said tank car were lost in transit and that this defendant did not deliver the said shipment or any part thereof to the plaintiff or to anyone at the said Gretna, Louisiana, or at any other place or at all.

V.

This defendant denies each and every allegation contained in paragraph XI of plaintiff's complaint

in so far as they [8] refer to this defendant and admits each and every allegation contained in said paragraph in so far as they refer to the defendant Western Vegetable Oils Company, Incorporated. In this behalf this defendant alleges that neither it nor any of its agents or employees had anything to do with the loading of the said tank car.

VI.

This defendant denies generally and specifically each and every allegation of plaintiff's complaint not expressly admitted or denied for lack of information or belief by this answer and denies that by reason of any act or acts, fault, carelessness, omission or omissions upon the part of this defendant or any of the agents or employees of this defendant, said shipment or any portion thereof was damaged or lost as alleged in said complaint or that the plaintiff herein was damaged in the sum of $3,847.50 or any other sum, or at all.

For a First, Separate and Distinct Defense:

This defendant is informed and believes and therefore alleges that tank car, initial HTCX, No. 1743, referred to in paragraph VII of plaintiff's complaint, was owned or leased by the defendant Western Vegetable Oils Company, Incorporated; that said tank car was of peculiar construction and was used in the transportation of liquid commodities such as coconut oil; that said tank car was loaded by and under the supervision of the defendant Western Vegetable Oils Company, Incorporated, and that when it was delivered to this defendant at

Oakland, California, it was improperly loaded and/or was in a defective condition, in that the outlet valve of the said car did not seat properly; that reasonable and ordinary inspection made by the agents and employees of this defendant at the time of delivery of said car to this defendant, or as soon thereafter as practicable, or at any other time, failed to disclose that said car was improperly loaded or [9] was in a defective condition as aforesaid until it was found to be leaking while it was in transit; that said reasonable and ordinary inspection made by the agents and employees of this defendant would not disclose whether said car was properly or improperly loaded and/or in a defective condition as aforesaid, because of its peculiar construction.

For a Second, Separate and Distinct Defense:

This defendant further alleges that the said shipment of coconut oil was transported in accordance with this defendant's tariffs, duly posted, published and on file with the Interstate Commerce Commission and in conformance with the terms and conditions and provisions of the uniform order bill of lading approved by the Interstate Commerce Commission, hereinbefore referred to as Exhibit "A" in this answer and to which reference is hereby made, and in this behalf this defendant alleges that included in the said terms and conditions of the said bill of lading issued for the transportation of said shipment was the following express provision:

> "No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto

or delay caused by * * * the act or default of the shipper or owner * * *''.

In this behalf, this defendant alleges that any and all loss to the said shipment was solely due to the act or default of the shipper and defendant Western Vegetable Oils Company, Incorporated, in that it failed to properly load the said shipment of coconut oil and/or loaded it into a defective car that was not suitable or fit for the transportation of said shipment of coconut oil.

For a Third, Separate and Distinct Defense:

This defendant alleges that the records of this defendant disclose that the said shipment was handled by its agents [10] and employees in a usual and customary manner without negligence, and it is further alleged that if the said shipment had been properly loaded by the said Western Vegetable Oils Company, Incorporated, in a suitable and satisfactory car for the transportation of liquid commodities such as coconut oil, the said shipment would have been delivered at its destination and the loss of said coconut oil would not have occurred.

Wherefore, this defendant prays that plaintiff take nothing by reason of its action herein and that as to it the said complaint be dismissed; that this defendant have judgment, together with its costs, and for such other and further relief as to the Court may seem just and proper.

A. A. JONES
A. T. SUTER
Attorneys for defendant
Southern Pacific Company

Service of copy of the within Answer is admitted this 12th day of January, 1943.

DERBY, SHARP, QUINBY & TWEEDT

Attorneys for Plaintiff [11]

(For use in connection with Uniform Domestic Order Bill of Lading adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)

UNIFORM ORDER BILL OF LADING

This Shipping Order must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon and retained by the Agent

Shipper's No..... Agent's No.....

SOUTHERN PACIFIC COMPANY—
PACIFIC LINES

Receive subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order, at Oakland California July 18, 1941 from Western Vegetable Oils Company the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined, as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if

on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original Order Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

Consigned to Order of Western Vegetable Oils

Destination Gretna State of Louisiana County of .....

(Mail or street address of consignee—For purposes of notification only.)

Notify Southern Cotton Oil Company

At Gretna State of Louisiana County of.....

Route SP—T&NO 17764

Delivery Carrier Car Initial HTCX Car No. 1743

No. Packages T/C

Description of Articles, Special Marks, and Exceptions Crude Coconut Oil (Made from Philippine Copra).

*Weight (Subject to Correction) Est. 60000—64=
Class or Rate
Check Column
Gross Weight Actual Tare Net Weight
(Weigh Agt. Destn. Ascertain If Loaded Full Shell Cpty. Rule 35 CFC #14

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

..... per .....

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. 38400 (Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid." .....

Received $....., to apply in prepayment of the charges on the property described hereon.

..... Agent or Cashier

Per..... (The signature here acknowledges only the amount prepaid.)

Charges advanced: $.....

WESTERN VEGETABLE OILS COMPANY

Shipper.

Per RALPH J. BOOMER

Permanent post-office address of shipper.....

2 H. R. WILLIAMS

SP

☞Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

7-18-41

[Printer's Note: The reverse side is a printed form consisting of Contract Terms and Conditions.]

Receipt of Service

[Endorsed]: Filed Jan. 12, 1943. [13]

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[Title of District Court and Cause.]

## ANSWER OF WESTERN VEGETABLE OILS COMPANY, INCORPORATED

Comes now defendant Western Vegetable Oils Company, Incorporated and answering plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

Answering the allegations of paragraph VI of said complaint this defendant denies all and singular said allegations and each and every part thereof; further answering the allegations of said paragraph defendant alleges that on or about the 18th day of June, 1941 plaintiff and defendant entered

into a written contract a copy of which is attached hereto, marked Exhibit "A" and made a part hereof; that said contract contains among its provisions a [14] provision reading as follows:

> "(6) This contract shall be deemed to be made and performed in California and is to be governed by the laws thereof. Clause Paramount: This contract is subject to the published Rules and Regulations of the National Institute of Oilseed Products — and which are hereby made a part of this contract, except insofar as such Rules and Regulations are modified or abrogated by this contract."

that the published Rules and Regulations of the National Institute of Oilseed Products referred to in said contract and made a part thereof contain, among other rules, the following:

RULE 64—

> "Any dispute arising under contracts which cannot be settled amicably between interested parties shall immediately be submitted to arbitration before a committee selected by the San Francisco Chamber of Commerce under the Rules of the National Institute of Oilseed Products."

that defendant, under and by virtue of the terms of said contract, has demanded arbitration of the dispute between plaintiff and defendant which is the subject of plaintiff's complaint against this defendant on file herein, that plaintiff has failed and refused to submit said dispute to arbitration as

required by the terms of said contract, that this action must be stayed until an arbitration has been had in accordance with the terms of said contract.

II.

Answering the allegations of paragraph IX of said complaint beginning with the word "defendants" in line 27 of page 3 of said complaint and ending with the words "at all" in line 1 of page 4 of said complaint this defendant denies all and singular said allegations and each and every part thereof; further answering the allegations of said paragraph beginning with the word "plaintiff" in line 1 page 4 of said complaint and ending with the word "aforesaid" in line 4 of said page of said complaint defendant avers that it has no information or belief sufficient to enable it to answer said allegations and basing its denial upon that ground denies all and singular said allegations and each and every part thereof. [15]

III.

Answering the allegations of paragraph XI of said complaint beginning with the word "defendant" in line 15 of page 4 of said complaint and ending with the words "Company, or" in said line of said page of said complaint and beginning with the word "or" in line 16 of said page of said complaint and ending with the word "defendants," in said line of said page of said complaint and beginning with the words "to seal" in line 17 of said page of said complaint and ending with the word "failed" in line 19 of said page of said complaint

and beginning with the words "or loaded" in line 21 of said page of said complaint and ending with the words "coconut oil" in line 23 of said page of said complaint, this defendant denies all and singular said allegations and each and every part thereof.

IV.

Further answering the allegations of paragraph XI of said complaint this defendant alleges that said contract dated the 18th day of June, 1941, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof, contains among its provisions a provision reading as follows:

> "Price: Five and Seven Eighths Cents 5-7/8c) per pound F. O. B. Seller's Plant, Outer Harbor, Oakland, California"

this defendant further alleges that said published Rules and Regulations of the National Institute of Oilseed Products referred to in said contract and in paragraph I of this answer contain among other rules the following:

> "Rule 7.—F.O.B. Cars. (Name of departure point). Seller must load goods on or in cars, or trucks, secure carrier's bill of lading and be responsible for all loss or damage until goods are placed on/in cars or trucks at named departure point, and clean bill of lading is furnished by carrier. All further risk is for account of Buyer."

that under and by virtue of the terms of said contract and said Rules this defendant loaded said

61,560 lbs. of Crude Coconut Oil [16] into that certain tank car described in plaintiff's complaint on file herein and delivered said tank car and said crude coconut oil in apparent good order and condition to defendant Southern Pacific Company as alleged in paragraph VII of said complaint; that defendant Western Vegetable Oils Company, Incorporated has fully performed all of the terms and conditions of said contract on its part to be performed.

V.

Answering the allegations of paragraph XII of said complaint this defendant denies that plaintiff has been damaged in said sum of $3,847.50, or in any other sum or at all; this defendant further denies that said sum of $3,847.50, or any other sum, is now, or at any time mentioned in said complaint has been, due, owing or unpaid from this defendant to plaintiff.

Wherefore, this defendant prays that this action be stayed as against this defendant until an arbitration has been had between plaintiff and this defendant of the issue in this action arising out of said contract in accordance with the terms of said contract and that plaintiff take nothing against this defendant by its complaint on file herein and that said defendant be dismissed hence with its costs of suit incurred herein and for such other and fur-

ther relief as the Court may deem proper in the premises.

MANSON, ALLAN & MILLER
Attorneys for Defendant
Western Vegetable Oils
Company, Incorporated.

(Duly Verified.) [17]

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EXHIBIT "A"

WESTERN VEGETABLE OILS COMPANY

24 California Street
San Francisco California

Plant:
Outer Harbor
Oakland, California

CONTRACT

Buyer's Contract No.....
Seller's Contract No. 28/169

Contract made at Oakland, California, this 18th day of June, 1941, between Western Vegetable Oils Company, Incorporated (a California Corporation), hereinafter called the Seller, and Southern Cotton Oil Company, Att'n: Mr. H. O. Rinne, Chicago, Illinois, hereinafter called the Buyer.

The Seller hereby sells and agrees to deliver, and the Buyer hereby purchases and agrees to receive the amounts and on the terms and conditions herein set forth:

Commodity: Crude Coconut Oil, manufactured from Copra produced in the Philippine Islands

Quality: Manila Type, Maximum 6% F. F. A.

Quantity: Five (5) Tankcars of approximately 60,000 pounds each

Packing: Seller's Tankcars

Shipment: July, 1941

Price: Five and Seven Eighths Cent (5-7/8c) per pounds F. O. B. Seller's Plant, Outer Harbor, Oakland, California

Terms of Payment: Net Cash, Sight Draft

Remarks: Shipping Instructions to follow. Sale made through Zimmerman Alderson Carr Co., Chicago.

Conditions:

(1) This sale is based upon the present Tariff and Customs House Classification, any increase or decrease in duty due either to a change in rate or method of assessment shall be for Buyer's account.

(2) Any tax or other government charges upon production, sale and/or shipment of goods sold hereunder, now imposed by Federal, State or Municipal authorities, or hereafter becoming effective, shall be added to the price herein provided, and shall be paid by the Buyer.

(3) Pacific Coast sampling and analysis shall be final unless otherwise specifically stated in contract. On all deliveries involving shipment by rail, Transcontinental Freight Bureau weight certificate shall govern.

(4) Seller shall not be responsible for delay or non-delivery, nor for any damage or loss resulting directly or indirectly from Acts of God, Perils of the Sea, Restrictions imposed by any government,

State or Governmental Authority, Fire, War, Strike, Commandeering of Vessels, Insurrections, Floods, Droughts, or from any cause beyond the control of the Sellers at any time, but such delay shall not excuse Buyers from accepting delayed and/or later delivery.

(5) In case of default in payment of any installment of purchase money when due, or in case the financial resources of the Buyer become impaired or unsatisfactory to the Seller during the life of this contract, Seller may either declare the whole sum owing by the Buyer immediately due and payable and further deliveries by the Seller against the contract shall be made only for cash in advance, or Seller may at its option cancel this contract. The option hereby given to Seller shall be in addition to and not to the exclusion of any other remedy provided by law.

(6) This contract shall be deemed to be made and performed in California and is to be governed by the laws thereof,

Clause Paramount: This contract is subject to the published Rules and Regulations of the National Institute of Oilseed Products—and which are hereby made a part of this contract, except insofar as such Rules and Regulations are modified or abrogated by this contract.

WESTERN VEGETABLE OILS COMPANY, INCORPORATED,

By W. A. DOWF.

Seller.

THE SOUTHERN COTTON
OIL CO.
C. J. SCHMIDT
Buyer.

[Endorsed]: Filed Feb. 1, 1943.

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[Title of District Court and Cause.]

NOTICE OF MOTION TO STAY ACTION

To Messrs. Derby, Sharp, Quinby & Tweedt
Attorneys for Plaintiff, Southern Cotton Oil Company, a corporation, and

To Messrs. A. A. Jones and A. T. Suter
Attorneys for Defendant, Southern Pacific Company, a corporation:

You and each of you will please take notice that on the 8th day of February, 1943 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, defendant Western Vegetable Oils Company, Incorporated will move the above-entitled Court at United States Post Office and Courthouse Building, Seventh and Mission Streets, San Francisco, California, for an order of said Court staying the above-entitled action as to said defendant Western Vegetable Oils Company, Incorporated, [19] until an arbitration has been had in accordance with the terms of a written contract out of which the issues between plaintiff and said defendant Western Vegetable Oils Company, Incorporated arise:

Said motion will be made upon the following grounds:

1. That the issues in the above-entitled action as between plaintiff and defendant Western Vegetable Oils Company, Incorporated, arise out of a written contract entered into between plaintiff and said defendant on or about the 18th day of June, 1941, a copy of which is attached to the answer of said defendant on file herein, and marked Exhibit "A" thereto, and which is hereby incorporated by reference.

2. That said contract contains among its provisions a provision reading as follows:

> "(6) This contract shall be deemed to be made and performed in California and is to be governed by the laws thereof. Clause Paramount: This contract is subject to the published Rules and Regulations of the National Institute of Oilseed Products—and which are hereby made a part of this contract, except insofar as such Rules and Regulations are modified or abrogated by this contract."

3. That the published Rules and Regulations of said National Institute of Oilseed Products referred to in said contract and made a part thereof contain among other rules, the following:

> "Rule 64—Any dispute arising under contracts which cannot be settled amicably between interested parties shall immediately be submitted to arbitration before a committee selected by the San Francisco Chamber of Com-

merce under the Rules of the National Institute of Oilseed Products."

4. That under the provisions of Sections 1280 to 1293 inclusive, of the Code of Civil Procedure of the State of California said issues between plaintiff and this defendant in the above-entitled action arising from said contract are required to be submitted to arbitration as provided in said contract; that by the terms of Section 1284 of said Code of Civil Procedure of the State [20] of California said action must be stayed until such arbitration has been had in accordance with the terms of said contract.

Dated: February 3, 1943.

MANSON, ALLAN & MILLER
Attorneys for Defendant
Western Vegetable Oils
Company, Incorporated.
808 Kohl Building
San Francisco, California.

Receipt of Service.

[Endorsed]: Filed Feb. 3, 1943. [21]

[Title of District Court and Cause.]

AFFIDAVIT OF ADOLPH SCHUMANN IN SUPPORT OF MOTION TO STAY THE ABOVE ENTITLED ACTION UNTIL ARBITRATION HAS BEEN HAD, AND IN ANSWER TO AFFIDAVIT OF LLOYD M. TWEEDT ON FILE HEREIN

State of California
City and County of San Francisco.—ss.

Adolph Schumann, being first duly sworn deposes and says: That he is an officer, to-wit: the president of Western Vegetable Oils Company, Incorporated, a corporation, one of the defendants in the above entitled action, and that he makes this affidavit for and in behalf of said defendant.

That in the affidavit of Lloyd M. Tweedt on file herein appears, in lines 20 to 24 of page 2. of said affidavit the following statement: "That said defendant, Western Vegetable Oils [22] Company, Incorporated, never demanded or requested submission of said claim or the controversy between plaintiff and said defendant for liability for said damage to arbitration prior to the filing of the complaint herein as aforesaid; "that said statement in said affidavit is untrue; that the shipment of coconut oil referred to in plaintiff's complaint on file herein was sold by defendant, Western Vegetable Oils Company, Incorporated to plaintiff through Zimmerman Alderson Carr Company of 105 West Adams Street, Chicago, Illinois as shown by the written contract of sale covering said shipment at-

tached to said defendant's answer on file herein; that on the 26th of May, 1942 your affiant, on behalf of said defendant sent to said Zimmerman Alderson Carr Company a letter, a copy of which is attached to this affidavit and marked Exhibit "A" hereto; that the fifth and sixth paragraphs of said letter read as follows:

> "According to the terms of our contract, since there is a dispute, it would seem to us that an arbitration might be the sensible thing. The amount involved is $3800.00. If the thing goes into Court, it will be costly to everybody and probably the Attorneys will be the only ones who wind up in the money."
>
> "We would appreciate it if you would take this up with the proper parties at Southern Cotton Oil Company,—don't know whether this would come under Mr. Rinne's jurisdiction or not, but it seems so unnecessary that a Law suit should be placed."

That on or about the 19th day of June, 1942 your affiant received from said Zimmerman Alderson Carr Company a letter dated the 16th day of June, 1942, a copy of which is attached to this affidavit, and marked Exhibit "B" hereto; that enclosed with said letter of June 16, 1942 was a letter from plaintiff to said Zimmerman Alderson Carr Company dated June 15, 1942, a copy of which is attached to this affidavit and marked Exhibit "C" hereto; that the third paragraph of said letter of plaintiff dated June 15, 1942, marked Exhibit "C" hereto reads as follows: [23]

"Mr. Schumann refers to arbitration, and it seems to me that if there is any arbitration, it should be between the Western Vegetable Oils Company and the railroad, because we should not be made to stand any part of the loss. Don't you agree?"

That on or about the 19th day of June, 1942 your affiant on behalf of this defendant wrote to said Zimmerman Alderson Carr Company a letter, a copy of which is attached to this affidavit and marked Exhibit "D" hereto; that some time prior to said 19th day of June, 1942 an associate of Derby, Sharp, Quinby & Tweedt, attorneys for plaintiff, whom your affiant believes to have been one John J. Whelan, called upon your affiant at the office of said defendant, 24 California Street, San Francisco, California; that at that time and place your affiant exhibted to said associate the letters above specified and stated to him that this defendant desired to submit the subject matter of the above entitled action to arbitration; that said associate then stated that he would so advise plaintiff and would communicate with your affiant later; that your affiant received no further communications from plaintiff or plaintiff's attorney until the above entitled action was commenced.

That attached to this affidavit and made a part hereof is a copy of the "Rules of the National Institute of Oil Seed Products"; that said Rules are the rules referred to in the written contract between plaintiff and defendant, a copy of which is

attached to this defendant's answer on file herein;

That your affiant denies that this defendant has at any time waived or abandoned any right it may have to submit to arbitration the controversy which is the subject of the above entitled action.

ADOLPH SCHUMANN

Subscribed and sworn to before me this 24th day of February, 1943.

[Seal] EDITH GOEWEY

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires December 23, 1944. [24]

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EXHIBIT "A"

(Copy)

May 26, 1942.

Ail Mail

Zimmerman Alderson Carr Company,

Chicago, Illinois.

Gentlemen:—

On July 21st, 1941, we shipped a carload of Coconut Oil to Southern Cotton Oil Company at Gretna.

This car, enroute, lost its entire contents, and the Southern Cotton Oil Company naturally claimed on the Railroad Company, who always turn those things down, and in turn, wrote their San Francisco Office, who spoke to us on this matter a number of times. The San Francisco man, who was

handling this affair, has died, and the next we hear is that the matter has been placed in the hands of an Attorney and a letter has been written to our Attorney in connection with it.

We are sorry the matter has gone into the hands of Attorneys, especially the ones that it has been turned over to, as naturally they will want to go ahead and sue probably the Railroad, the Tankcar Company and ourselves. The way we look at a thing like this is that we always try to take a very broad view, just like we did in the washing out of the sale to the Southern Cotton Oil Company; we think we probably could have stood on the contract and claimed Force Majeure, but we did not choose to do it.

Now on this tankcar affair, we truly think our position is correct in that we had gotten a signed Bill of Lading from the Railroad Company and also a Railroad Weight Tag on the car; the Railroad Scale is about one hundred feet from our Plant and the Railroad man inspects and weighs the car. We think that we are absolutely clear in this matter, but seemingly, since the Southern Cotton Oil Company has the thing in the hands of Attorneys, they want to prosecute the matter.

According to the terms of our contract, since there is a dispute, it would seem to us that an Arbitration might be the sensible thing. The amount involved is $3800.00. If the thing goes into Court, it will be costly to everybody and probably the Attorneys will be the only ones who wind up in the money.

We would appreciate it if you would take this up with the proper parties at Southern Cotton Oil Company—don't know whether this would come under Mr. Rinne's jurisdiction or not, but it seems so [25] unnecessary that a Law suit should be placed.

Will you kindly follow this up for us?

Kindest Regards,

WESTERN VEGETABLE OILS COMPANY, INC.

T. [26]

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EXHIBIT "B"

(Copy)

ZIMMERMAN ALDERSON CARR COMPANY

105 West Adams Street

Telephone Randolph 2037 Chicago, Ill.

June 16, 1942

A. Schumann & Co.
24 California Street
San Francisco, Calif.

Gentlemen:

Refer to your letter to us of May 26th and find attached original letter from Ed Reinke of Southern Cotton Oil Company, together with letter attached from their Mr. Barnett, Traffic Manager, to William Lyons, Assistant Secretary and Treasurer.

We shall await further instructions from you on this matter.

Yours very truly.

B.

ZIMMERMAN ALDERSON
CARR COMPANY

WBB:NMH
Enclosures [27]

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EXHIBIT "C"

(Copy)

THE SOUTHERN COTTON OIL COMPANY
1464 West 37th Street
Chicago, Ill.

June 15, 1942

Mr. W. B. Burr
Zimmerman Alderson Carr Company
105 West Adams Street
Chicago, Illinois

Dear Mr. Burr:

I attach copy of a memo written by our Traffic Manager, Mr. Barnett, to Bill Lyons, regarding the claim against the Western Vegetable Oils Company.

In sending this copy of Barnett's memorandum to me, Bill Lyons asks if I have any comments to make. It would seem to me that there is only one procedure, and that is to allow the claim to be settled in court. If you get any thoughts, especially after hearing from Mr. Schumann further, I should be pleased to hear from you.

Mr. Schumann refers to arbitration, and it seems

to me that if there is any arbitration, it should be between the Western Vegetable Oils Company and the railroad, because we should not be made to stand any part of the loss. Don't you agree?

Yours truly,

THE SOUTHERN COTTON
OIL COMPANY
E. L. REINKE
Manager

ELR AWM [28]

(Copy)

MEMORANDUM

June 4 1942

To Mr. M. W. Lyons, Asst. Secy.-Asst. Treas.
From S. R. Barnett

Referring to the letter to you of May 29th from Mr. Reinke to which is attached a letter from the Western Vegetable Oils Company of San Francisco, California, and one from the Zimmerman Alderson Carr Company of Chicago, in connection with the loss of a tank of Coconut Oil shipped in HTCX 1743 from Oakland, California, last year, via the Southern Pacific, by the Western Vegetable Oils Company to their order, notify us.

The railroad, after considerable correspondence and lapse of time, denies liability. It states that it was discovered at Aden the outlet capt was off. The car was then taken to El Paso shops at El Paso, Tex.

This was a seller's tank car. The car was returned to the West Coast by the railroad on some-

body's instructions, not ours, who gave these instructions, the correspondence does not disclose.

The case develops into a triangular trial for these reasons; the railroad has denied liability and says this is an owner's defect. We paid the draft. Somebody has to make us whole and it is necessary to join both the shipper and the railroad to determine at the trial of the case who, in fact, is liable to us for the loss. We are certainly the innocent party.

This case is very much like the case we had at Ballinger, Texas, several years ago, in that the shipper claims he properly loaded the car; the oil was lost; the carrier denied that the loss was caused by it.

The tank car was not our tank car, but was a tank car furnished by the shipper. If, as is indicated by the Western Vegetable Oils Company's letter, it is not its responsibility, then it should not fear the litigation, and the railroad will be cast, if it is responsible, not only for the amount of the claim, but all incidental expenses, such as attorneys' fees and costs.

It became necessary for us to file suit to tell the statute of limitations so that we would be in court in time to protect our interests and because of the above facts, it was necessary to join as defendants, not only the railroad, but the shipper as well.

I return your papers.

Mr. Kammer has all of the file or he has sent it to the attorneys on the Coast.

S. R. BARNETT

SRB:rm
Attmt. [29]

EXHIBIT "D"

(Copy)

June 19, 1942

Zimmerman Alderson Carr Company,
105 West Adams Street
Chicago, Illinois

Gentlemen:

We refer to your letter of June 16 relative to Southern Cotton Oil Company Claim. I have also read the memorandum from Mr. Barnett to Mr. Lyons, as well as Mr. Reinke's letter to you.

We don't know what to say as we can't see it their way at all. If we were selling them on a delivered basis destination it would be one thing, but when they are buying f. o. b. our Mill under certain weight conditions it is another.

In Mr. Barnett's memorandum he suggests that we might fear litigation which we do not. It is the old story, I guess, the traffic man is like the claims department of a railroad, they love to have their desks full of files and unsettled matters, otherwise they would not have a job.

We are not going to admit responsibility and then go after the railroad. It is a matter entirely between the Southern Cotton Oil Company and the Railroad, if we are drawn into it well and good.

We want to thank you very much for your trouble in this matter.

We had a talk with their Attorneys here and said something about arbitration and they were very

happy to go ahead on such a deal. What will happen we do not know.

Very truly yours,
WESTERN VEGETABLE
OILS CO. INC.
By

AAS:FN [30]

[Endorsed]: Filed Feb. 25, 1943.

# NATIONAL INSTITUTE OF OILSEED PRODUCTS

SAN FRANCISCO, CALIFORNIA

U. S. A.

# TRADING RULES

Effective February 1, 1940

SECRETARIAT:

149 California Street
San Francisco, California
U. S. A.
Cable Address: NIOSPROD

# NATIONAL INSTITUTE OF OILSEED PRODUCTS

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# NATIONAL INSTITUTE OF OILSEED PRODUCTS

**San Francisco, California, U. S. A.**

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The following RULES having been approved and adopted by the NATIONAL INSTITUTE OF OILSEED PRODUCTS, and a copy thereof having been sent to all members, these RULES will be effective and in force on February 1st, 1940.

Any modification thereof, which may be incorporated in the rules from time to time, will be communicated to all members and become effective on the date stated in the advice of adoption.

## GENERAL RULES

### DEFINITION OF TERMS

RULE 1.—C.I.F. *(Cost, insurance and freight)*. Under a C.I.F. sale the price includes the cost of the merchandise placed on board the vessel, freight and marine insurance F. P. A. (War risk insurance, if required, to be covered on terms to be agreed upon between Buyer and Seller). Seller is not responsible for the arrival of goods at destination, nor for loss or damage in transit. The clauses of the bills of lading and of the certificates or policies of insurance covering the merchandise are binding upon the buyer just as though set forth in detail in these rules. The bills of lading shall be "clean."

Buyer to pay all duties, clearance, wharfage charges, or any other expenses beyond completion of loading at point of shipment, except freight and insurance as specified above.

When C. I. F. sales are "qualified," such as by: landed weights, or landed quality, or duty allowed, the only change in sellers' responsibility shall be as regards such specifically qualified conditions, and contract shall be otherwise construed as though it were on unqualified c. i. f. terms, and the goods, in all other respects, shall be for account and risk of the buyer when shipped.

RULE 2.—C. & F. *(Cost and freight)*. A C. & F. sale differs from a C. I. F. sale only in that the buyer is responsible for the insurance after the goods have been loaded on vessel and the documents passing ownership tendered.

However, vessel furnished must be A 1 Lloyds or equivalent classification; if not, the seller to pay the difference between the actual premium paid and the premium ruling for vessels of A 1 Lloyds or equivalent classification.

RULE 3.—F. O. B. VESSEL. *(Free on board vessel)*. Under an F. O. B. sale,

SELLER MUST:

1). Carry goods to named embarkation point at his own expense.

2). Load goods on board vessel and pay loading charges, harbour dues and all port charges at point of loading, also export taxes (if any), and any other local or governmental duties, charges or assessments levied on goods prior to actual loading on board vessel.

3). Export charges: such as making out export declarations are paid by the seller and normally included in the price of the goods.

4). Establish all necessary consular invoices, certificates of origin, certificates of health and such other documents as may be required by the Authorities of the country of destination,—but the cost thereof is for account of the Buyer, unless specifically stated otherwise in the contract.

5). Provide usual "clean" "on board" Ocean going vessel bill of lading.

6). Be responsible for all loss/damage until goods are placed on board vessel.

BUYER MUST:

1). Charter vessel, or reserve space on board vessel.

2). Notify seller of name of vessel, or steamship line, to which delivery is to be made, within a reasonable time after notification by Seller that goods are ready.

3). Be responsible for all loss or damage after goods have been placed on board vessel.

RULE 4.—F. A. S. *(Free alongside steamer)* (named embarkation point). Under an F. A. S. sale.

SELLER MUST:

1). Carry goods alongside vessel at his own expense.

2). Goods must be placed under ship's tackle either on wharf, or, if vessel cannot come alongside, on lighters.

3). Be responsible for all loss or damage until goods are delivered alongside vessel, or on wharf under ship's tackle.

4). Provide usual dock or Mate's receipt.

BUYER MUST:

1). Load goods on board vessel and pay loading and port charges.

2). Be responsible for all loss or damage from time goods are delivered alongside vessel, or wharf.

RULE 5.—EX DOCK. Goods sold Ex Dock are at the risk of the buyer as soon as cleared through Customs, placed on the dock free of all

charges to the buyer, and delivery-order is tendered. Any loading, cartage, or other charges, and all risks after delivery-order is tendered are for account of the Buyer.

RULE 6.—EX WAREHOUSE. Goods sold ex warehouse are at the risk of the Buyer as soon as negotiable warehouse receipt, or delivery-order is tendered, and insurance risk up to time of such tender is for account of the Seller.

RULE 7.—F. O. B. CARS. (Name of departure point). Seller must load goods on or in cars, or trucks, secure carrier's bill of lading and be responsible for all loss or damage until goods are placed on/in cars or trucks at named departure point, and clean bill of lading is furnished by carrier. All further risk is for account of Buyer.

RULE 8.—DELIVERED. (Point of destination). All risks and expenses until arrival at point of destination are for account of Seller.

## TIME OF SHIPMENT

RULE 9.—SPOT SALES. Under spot sales, delivery-order shall be despatched to Buyer within one full business day from date of sale.

RULE 10.—IMMEDIATE SHIPMENT. Shall be within five full business days from date of sale (date of sale excepted) on transactions for shipment within the United States, or to/from Canada, Cuba and Mexico.

On Transactions for overseas shipment, it shall be within ten full business days from date of receipt of order (day of receipt excepted).

RULE 11.—PROMPT SHIPMENT. Shall be within ten full business days from date of sale (date of sale excepted) on transactions for shipment within the United States, or to/from Canada, Cuba and Mexico.

On transactions for overseas shipment, it shall be within twenty full business days from date of receipt of order (day of receipt of order excepted).

RULE 12.—OTHER SPECIFIED SHIPMENTS. Shall be as per contract of sale.

RULE 13.—SPREAD DELIVERIES OR SHIPMENTS. When a specific quantity of merchandise is sold for delivery/shipment spread over a certain period, Buyer agrees to accept, and Seller agrees to make shipment/delivery in approximately equal monthly quantities, unless expressly stated otherwise in the contract.

RULE 14.—DATE OF SHIPMENT. The date of the Ocean on board bill of lading and/or railroad bill of lading will be evidence of time of shipment.

## SHIPPING

RULE 15.—SELLERS' FAILURE TO SHIP. Should seller fail to ship within contract period, unless for reasons provided for in these Rules, Buyer may after five days' notice (Saturday afternoons, Sundays and Holidays excepted) from receipt of Sellers' telegraphic notice of inability to ship, either purchase for Sellers' account through a reputable broker, or cancel that portion of the contract on which the Seller has defaulted, and all losses by market difference and expenses incurred in connection with such default to be for Seller's account.

## SHIPPING INSTRUCTIONS

RULE 16.—

a). On sales for *immediate shipment* or *spot delivery* complete instructions must be given by the buyer forthwith by telegram.

b). On sales for *prompt shipment* instructions must be given by buyer by telegram within 48 hours.

c). On sales for shipment *during a specified period* buyer must give complete instructions not later than five days after first day of shipping period.

d). On sales of merchandise originating in *Overseas Countries* buyer must deliver shipping instructions to seller not later than one day before the expected berthing of carrying vessel. Failure to do so renders buyer liable for demurrage and other expenses as a result thereof.

e). On sales for shipment at *buyers' option* within a stated period, Buyer must give seller seven days' notice of his requirements accompanied by complete shipping instructions. If buyer fails to do so, seller must not be responsible for failure to make delivery within contract period. If buyer fails to furnish seller with his requirements and shipping instructions during the contract period, seller may cancel or sell for buyers' account on 48 hours' notice of such intention, holding buyer for difference in value and all expenses.

If delivery or shipment is at *sellers' option* within a stipulated period, seller may demand of buyer upon seven days' notice buyers' requirements and shipping instructions. If buyer fails to furnish seller with such requirements and instructions at the expiration of this seven days' notice, seller may cancel or sell the merchandise for buyers' account, upon 48 hours' notice, holding the buyer for difference in value and expenses.

RULE 17.—FAILURE TO GIVE SHIPPING INSTRUCTIONS. If buyer fails or declines to give shipping instructions within stipulated time as provided in RULE 16, seller may on 48 hours' notice (Saturday afternoons, Sundays and Holidays excepted) either cancel contract to the extent of the goods involved, or sell through a reputable broker for buyers' account, or make shipment as provided in the contract. Buyer shall be liable for all loss and expenses incurred as a result of such failure to give shipping instructions.

RULE 18.—ROUTING. On sales made F. O. B. carrier Port of Entry, seller has option of selecting initial line but shall, when possible, recognize routing named by buyer. When goods are sold "delivered", seller shall have option to select entire routing. When goods are sold F. O. B. Port of Entry for transhipment by all-rail, rail and water, or all-water route, and after arrival at Port of Entry it be impossible to observe buyers' routing instructions by reason of inability of carrier to furnish equipment, or if shipment is refused by carrier on account of strike, railroad embargo, or Governmental regulations, or inability to obtain vessel space, Seller shall notify buyer, and in the absence of immediate instructions to ship by another open route, or to store goods for buyers' account, seller shall be privileged to ship by an open route at equivalent freight rate.

RULE 19.—ABSORPTION OF COST OF LADING CARS. Where merchandise is sold F. O. B. cars, and buyer orders the merchandise shipped to a point not within the territory covered in the railroad's absorption tariff, then the buyer shall pay the cost of loading cars not absorbed by the railroad.

RULE 20—STORAGE FOR BUYERS' ACCOUNT. If for any reason named in RULE 18 transhipment of goods sold F. O. B. carrier Port of Entry cannot be made, seller may then store at the expiration of the free time period allowed merchandise on the dock, making draft on buyer with weight certificate, negotiable warehouse receipt and fire insurance policy. Cost of hauling, storage and insurance and other expenses shall be for buyers' account. If merchandise be of such nature that free time is not allowed on dock, seller may store immediately as set forth above.

RULE 21.—POOL CAR SHIPMENTS. When goods are sold in less than carload quantities, to be included in one car for various buyers, seller shall have the option of forwarding car to some central distributing point, as near final destination as possible, buyer paying local freight from such distribution point to final destination.

RULE 22.—DISTRIBUTION CHARGES. If less-than-carload lot is shipped to a given distribution point (destination of carload) for the purpose of affording buyer the benefit of the carload rate of freight to such point, any expense of distribution of re-shipment shall be borne by buyer.

RULE 23.—TERMINATION OF SELLERS' RISK. Notwithstanding shipped to sellers' order, goods sold F. O. B. cars or F. O. B. vessel for transhipment at Port of Entry, are at risk of buyer from and after delivery to carrier at port of transhipment and upon issuance by carrier of bill of lading or shipping receipt.

RULE 24.—SELLER TO FURNISH INFORMATION. When merchandise is sold F. O. B. for a specific time of shipment, seller shall

furnish buyer on request within 48 hours, and in all events within seven days after date of shipment, the car numbers, initials and date of shipment. This shall not deny the seller the right of substitution, provided all other terms of the contract are observed.

RULE 25.—ACCOMMODATION TO BUYER. When buyer requests seller to perform service outside of contract requirements, seller shall not be responsible for any error made in carrying out buyers' instructions. In undertaking such work for account of buyer, seller is merely acting as agent without liability.

RULE 26.—DECLARATION OF VESSEL. When contracts stipulate that shipments are to be made from foreign countries or American Colonies or dependencies, declaration shall be made by seller within forty-eight hours of receipt of mail or cable advices of shipment. If shipment or part thereof be lost, contract shall be void for the portion lost if name of vessel has been declared by seller and satisfactory proof of shipment from abroad has been submitted to buyer. If a shipment or part of same is lost before seller has, through delay in cables or mails or from other causes beyond his control, received advance advice of shipment, seller shall be relieved from making declaration as regards that portion of the contract.

If, after declaration having been passed, vessel is lost before reaching loading port, the time of shipment shall be extended for not exceeding thirty days, after which the buyer shall have the option of further extension to be agreed upon, or to cancel the contract for the portion of contract so affected. Buyer to declare such option immediately upon receipt of advice that shipment cannot be made during the extended time.

Should vessel arrive before declaration has been made and extra expense been incurred through these circumstances, such expenses are to be borne by seller.

RULE 27.—CHANGE IN FREIGHT RATE AND TAX. Any change in rail freight rate from Port of Entry and/or rail shipping point and tax thereon, after date of contract, shall be for account of buyer, unless otherwise specified in the contract.

RULE 28.—VARIATION IN QUANTITY "FULL CARGO". When a sale is for a full cargo (estimated at a certain number of tons) per vessel named by seller and accepted by buyer, the estimate shall be held to be an appropriation only, and the contractual obligation as to quantity shall be "full cargo", and seller must deliver and buyer must accept the quantity shipped in vessel named.

The quantity deliverable shall be within five per cent (5%) of the estimated contract quantity. Any excess or deficiency beyond this five per cent to be settled for at the C. I. F. price on date of vessel's arrival; this value to be fixed by arbitration, unless mutually agreed upon between buyer and seller.

RULE 29.—VARIATION IN SPECIFIC QUANTITY SALES. Where not otherwise provided in Uniform Contracts, seller shall have the option of shipping five per cent (5%) more or less of the specified quantity, such surplus or deficiency to be settled as follows: on the basis of the weight delivered up to three per cent (3%) at contract price, and any excess or deficiency beyond this 3% at the C. I. F. price of the day of vessel's arrival at port of discharge; this value to be fixed by arbitration, unless mutually agreed upon between buyer and seller. Where merchandise is shipped in packages such as: bags, bales, cases, barrels, drums, etc., the quantity shipped must be within 1% more or less of the amount contracted for.

On sales of VEGETABLE OILS shipped IN BULK the settlement shall be made on the basis of net landed weight 5% more or less, and provided that any quantity lost through leakage, and recoverable under special insurance, shall be considered as "landed."

Each shipment to be regarded as a separate contract.

If oil is sold F. O. B. tank cars and contract calls for delivery of a given number of tank cars, the exact number of cars must be delivered.

RULE 30.—MINIMUM CARLOAD. Shall be as provided for by Railroad tariff and/or other regulations as in force on date of contract, and any changes in the minimum shall be for buyers' account.

RULE 31.—DIVERSION AND OTHER ACCOMMODATIONS. When buyer requests seller to divert shipment, or to make collections from other parties, or to perform other accommodations not provided for in contract, seller shall not be responsible for any error made in carrying out buyers' instructions. In undertaking such work for account of buyer, seller is merely acting as agent without liability or without compromising sellers' rights under the contract. Seller shall be privileged to make delivery by presentation of exchange bill of lading provided same shows that original bill of lading was dated within contract time.

RULE 32.—PARTIAL LOT SALES. If quantity sold is part of a larger parcel no distinction such as by mark, lot number, etc., shall be deemed necessary. All damage, sweepings, excess or deficiency shall be pro-rated as nearly as practicable.

RULE 33.—LOSS OF SHIPMENT. Should shipment, or any portion thereof, be lost, contract to be void to the extent of such quantity.

RULE 34.—SPLIT CARLOADS. Deliveries against sales ex dock or ex warehouse, shall be made in not less than carload lots. If carload lots or parcels are split by seller for his convenience, additional freight or expenses shall be for account of seller.

RULE 35.—SUBJECT TO SAMPLE RULES. When merchandise is sold on regular grades and types established, or when sold with a

specific guarantee, or when sold on sample, buyer may reject if the merchandise does not conform to contract requirements, except as otherwise provided in these Rules.

When spot lots are sold on sample, permitting of the immediate varification of the actual merchandise by the buyer, and selling sample is not expressly guaranteed to represent the merchandise, there shall be no sale if goods do not conform to sale requirements.

In all other cases, delivery shall be taken by purchaser if merchandise be good merchantable, at a proper allowance to be fixed by arbitration.

RULE 36.—SELLERS' FAILURE TO ANALYZE THE TENDER. Seller may ship from point of delivery without the formality of tender of analysis, but in such case guarantees the quality at United States or Canadian destination.

RULE 37.—SAMPLING OF PACKAGES. Sampling shall be from 10% of packages and in such a manner as to prevent the introduction of dirt and moisture. Buyer or seller may demand the sampling of more than 10% of the packages, or may demand more than one sampling, at the expense of the party making the demand. If an unusual proportion of moisture or other foreign substance is found, and buyer and seller fail to agree upon the percentage to be sampled, the Board of Arbitration may order samples drawn at its discretion.

RULE 38.—SAMPLING. Unless otherwise provided for in the contract, sampling and analysis on oils shall be performed in accordance with the Rules and prescribed methods of the Society of American Oil Chemists in effect at the time of signing the contract.

Analysis on Concentrates shall be performed in accordance with Rules and prescribed methods of the Association of Official Agricultural Chemists, in effect at the time of signing the contract.

RULE 39.—BUYERS' OBLIGATION TO TAKE DELIVERY. When buyer claims allowance only, he shall take delivery of goods and pay for same, and if required by buyer, seller shall furnish bond or bank guarantee to pay promptly any refund agreed upon or allowed buyer by arbitration. Failure of the buyer to take delivery or to furnish shipping instructions as called for in these rules shall render him liable for all losses and/or expenses incurred.

RULE 40.—SEPARABLE LOTS. Each shipment or delivery shall constitute a distinct and separate contract, and buyer shall not be entitled to reject any undelivered portion of the goods by reason of Sellers' default as to any other portion thereof, except that: if either party admits insolvency, all deliveries called for under the contract may be closed out at fair market price, at the option of the solvent party, on due notice.

Rejection if accepted by seller shall constitute delivery.

RULE 41.—PROOF OF ORIGIN. If the genuineness of the product is questioned, the proof of place of origin and shipping documents, or certified copies of same, may be demanded from the seller by the buyer or the Arbitrators.

RULE 42.—OFFICIAL WEIGHERS AND INSPECTORS. When circumstances compel buyer to move goods in less than 48 hours, he must, in order to establish claim, employ weighers or inspectors as provided for in these Rules; and sampling, weighing and inspecting must also be done as provided for in these Rules.

RULE 43.—SAMPLING AND WEIGHING IN CASE OF DISPUTE. In case of rejection or dispute as to quality or weights or condition of packages, seller shall be notified immediately, and shall be allowed 48 hours after receipt of this notification, proper time being allowed for transmission of communication, within which to arrange for sampling or weighing or inspection. Failure of buyer to so notify seller shall constitute acceptance.

Sampling or weighing shall be done by such person or persons as may be mutually agreed upon and as provided for in these Rules.

If the seller refuses or neglects for 48 hours, after notification, to arrange for sampling or weighing or inspection as above, the buyer may appoint an official inspector or weigher of this Institute to draw samples or to weigh in the manner described in these Rules. Such official inspector or weigher will be considered the representative of both the buyer and seller.

If sampling or weighing has to be done at a place where no official inspector or weigher appointed by the Institute is available, then buyer may appoint a representative of any other Commercial Body, or recognized competent inspector, weigher or sampler, and when such samples or weights are submitted with proper affidavit as to all material facts establishing the identity and the condition of the merchandise, such returns shall be considered authentic.

RULE 44.—EXPENSES PAID BY PARTY AT FAULT. In case of claims, all necessary expenses incident to the controversy to be borne by the party found at fault. This rule is not to prejudice the assessment of costs in cases submitted to arbitration.

RULE 45.—TARIFF AND CUSTOMS CLASSIFICATION. All sales are based upon United States tariff and customs classifications, excise, and other United States Governmental tax in force at time of signing contract, and any change therein, or the imposition of duty, or any other taxes of any kind whatsoever on goods previously free, or Government and/or State tax shall be for buyers' account. Seller shall not be responsible for consequences arising from unforeseen administration customs regulations.

The containers of goods shipped from Foreign Countries or United States colonies, dependencies or territories must bear, as prescribed by the U. S. Tariff Act, the name of the country or origin, such as: "Produce of . . . . . ". Penalties exacted by the U. S. Government for lack of such proper marking shall be at the expense of the seller/shipper.

RULE 46.—SETTLEMENTS. Unless otherwise specified, settlement of contracts shall be based on DRUMS of 400 lbs. net, or BARRELS of 375 lbs. net. Tank Cars of 6,000 gallon capacity on the basis of 45,000 lbs. net; 8,000 gallon capacity on the basis of 60,000 lbs. net; and 10,000 gallon capacity on the basis of 75,000 lbs. net. Other packages will be based on the custom of the trade. It is understood that a tank car must be loaded to shell capacity.

RULE 47.—WEIGHTS. Certified public weighers' certificate and/or (at sellers' option) T. C. F. B. and/or authorized Territorial Weighing and Inspection Bureau weights at Port of Entry to be final.

RULE 48.—GOVERNMENT TESTS. Whenever goods sold are required to pass United States Government test or analysis, and fail to do so, seller has the option of substituting other goods conforming to contract, provided shipment is not delayed more than 60 days beyond original contract period. With consent of seller, buyer may at his option take delivery of goods and recondition same sufficiently to pass said test or analysis. The cost of such reconditioning to be mutually agreed upon between buyer and seller and to be for account of the seller.

RULE 49.—PLACE OF CONTRACT. Unless expressly agreed upon between buyer and seller, a contract covered by these Rules is assumed to have been made in the State where it is signed by the Seller.

RULE 50.—PAYMENT. In currency of the United States of America.

RULE 51.—PAYMENT AGAINST DELIVERY ORDER. When contract provides for payment in exchange for delivery order, such delivery order shall not be tenderable until goods have arrived.

RULE 52.—EXAMINATION AND APPROVAL. If sale is made subject to examination and approval on arrival at destination, and shipment is not disapproved within three full business days after arrival, contract shall be considered fully complied with on sellers' part.

If delivery is against a C. I. F. or F. O. B. or any other form of delivery covered in these Rules, and buyer fails to file notification of claim or rejection of the merchandise within five full business days after same shall have been made available for his inspection and sampling, such failure shall relieve seller of further responsibility under the contract as far as quality is concerned.

RULE 53.—BETTER THAN CONTRACT QUALITY. Seller shall have the option of delivering against contract, merchandise of a

higher grade than sold, provided it is of substantially the same components as the merchandise contracted for and has not been manipulated or modified in such a manner as to interfere with its use in place of the contracted goods.

RULE 54.—PRESENTATION OF DOCUMENTS. Where contract covers a commodity requiring shipment from one point to another within the United States, seller shall make presentation of covering documents to the buyer not later than twenty-one days after date of bill of lading: provided that, should merchandise reach destination, and seller does not present documents or arrange for release of goods within two calendar days thereafter, seller shall be responsible for any demurrage, car rental, storage, and other charges resulting therefrom. If the full period of twenty-one days shall have expired without seller presenting documents or arranging for release of goods, buyer may demand the documents, and if seller still fails to furnish same, or arrange for release of the goods, within forty-eight hours, Sundays and legal holidays excepted, after such demand is made, Buyer may, at his option, cancel that portion of the contract or buy in the merchandise for account of seller. Buyer must advise seller immediately which option he wishes to exercise, and should he elect to repurchase he must notify seller immediately of the repurchase price.

All documents required by the Government at Port of Entry—and which are specified in the terms of sale—must be supplied in good order and complete by the seller. Should documents, on arrival, not be complete and in order, and as a result thereof clearance of the merchandise be refused by the Government at Port of Entry, seller has three weeks' time in which to rectify and/or complete these documents, and during this time all demurrage and other expenses will be for sellers' account. If after three weeks such documents are not yet available at Port of Entry in proper and complete form, buyer may, upon notification to seller, reject the goods tendered as not conforming to conditions of sale and, at his option, cancel the contract for the portion so affected or buy in the open market for buyers' account such portion affected, and seller will be liable to buyer for eventual market difference plus all expenses accrued against the rejected goods.

RULE 55.—TENDERS. On sales between parties located in the United States and/or Canada tenders made between 9 A.M. and 5 P.M., and between 9 A.M. and 12 noon on Saturdays (Sundays and holidays excepted) shall constitute delivery unless rejected within 48 hours from tender or delivery of sample to buyer, or buyer's agent, at point of tender (Saturday afternoons, Sundays and holidays excepted). If buyer be a non-resident at point of delivery, he shall designate to seller, prior to contract period, the name of his resident representative qualified to accept service of tender. If buyer fails to designate his represntative to whom tenders shall be made, seller has the right to load and ship the merchan-

dise, having at least three samples drawn by licensed sampler, which sample shall be final. One sealed official sample shall be held by licensed sampler for at least 90 days.

Failure to reject a tender within 48 hours after sampling (Saturdays, Sundays and holidays excepted) shall constitute an acceptance of tender by buyer, except that: when tenders are made at points where no licensed inspector and/or Chemist of the Chamber of Commerce or Society of American Oil Chemists are located, buyer cannot be held to the foregoing time allowance, but must be given an opportunity to verify quality by promptest other means available.

When a rejection is uncontested by the seller, or is sustained as a result of arbitration, seller shall have the original contract shipping/delivery period within which to tender other lots.

RULE 56.—LETTER OF CREDIT. When terms of sale provide for payment under letter of credit, buyer shall establish an irrevocable bankers' credit in favour of seller in an amount sufficient to cover the value of the maximum quantity that seller may deliver under the contract.

Such credits shall be established:

a) for shipments to be made within 30 days from date of sale: by cable within five days from date of sale.

b) for shipments to be made within 60 days from date of sale: within five days from date of sale but to be notified by the first following air mail, or within thirty days from date of sale by cable/telegram.

c) when terms of sale of merchandise by a seller in the United States to a buyer in the United States stipulate payment under letter of credit (domestic letter of credit), the buyer shall establish an irrevocable bankers' credit in favour of seller within five (5) days from date of sale (Sundays and holidays excepted).

The expiry date shall be: at least fifteen days beyond the latest contract shipping date, when issued directly in favour of an overseas shipper (overseas letter of credit), and at least thirty days beyond the latest estimated time that goods may arrive at Port of Entry, when credit is issued in favour of United States seller (domestic letter of credit).

The expiry date of a domestic letter of credit covering goods originating in the United States shall be fifteen days beyond the latest contract shipping date.

Letter of credit shall provide for payment against surrender of documents which must conform to the contract stipulations, except that: a domestic letter of credit shall further provide alternative instructions to the Bank authorizing negotiation of sellers' draft thereunder if accompanied by negotiable warehouse receipt and fire insurance policy, in lieu of bill of lading, provided seller attaches to the draft an affidavit that goods were warehoused for buyers' account because of reasons as enumerated in Rule 20.

RULE 57.—EXTENSION OF LETTER OF CREDIT. If for reasons beyond sellers' control, as provided in these Rules, seller is unable to negotiate drafts under letter of credit prior to the expiry date, buyer, immediately upon receiving evidence that delay in shipment was occasioned by reasons beyond sellers' control, shall either establish a new credit or extend the expiry date of the original credit for a period equal to the time lost on account of such contingency. If delay exceeds thirty days, the buyer has the option of extending the expiry date or of cancelling as provided in Rule 58.

RULE 58: CASUALTY CLAUSE. In the event of War, Blockade, Prohibition of Export, or other Acts of Governments, Rulers, Princes or Peoples, preventing shipment, the contract so affected, or any unfilled part thereof, shall be cancelled.

Should shipment be delayed by: fire, strikes, lockouts, riots, rebellion, civil commotion, Act of God, or any other contingency beyond sellers' control, or in the event of the vessel named to carry goods under contract should be lost before or in the course of loading, the time of shipment shall be extended for thirty days. However, should the delay exceed thirty days, the Buyer shall have the option of accepting the goods for shipment as soon as possible, or during a period mutually agreed upon, or of cancelling the contract, but buyer must declare his intention not later than ten days after receipt of sellers' advice of inability to ship within the extended period.

The seller must produce good and satisfactory evidence of the existence of the disabling circumstances, such evidence to be attested by a United States Consular Officer in all places where a United States consulate is maintained, or by a local authority if no United States consulate is maintained.

If sale is made for shipment by a specified vessel, or if seller has declared his arrangements for shipping by a specified vessel, and such vessel, through Act of God, perils of the Sea, or other causes of "Force Majeure" fails to arrive at loading port for shipment within contract time, the time of shipment will be extended until such vessel is able to load, but such extension shall in no case exceed thirty days; if the delay exceeds thirty days the contract shall be cancelled. Seller must advise the buyer of the disabling contingency as soon as known. The seller, however, is privileged, if circumstances permit, to substitute another vessel of like classification loading within contract shipping time and following the same routing, in which case he must advise buyer immediately of the substitution. The seller must submit good and satisfactory proof of having contracted for the space and also of the causes of delay—attested by a United States Consular Officer, or by a local Authority if no U. S. consulate is maintained.

If sale is made for shipment by a specified vessel to be furnished by the buyer, and such named vessel, through Act of God, perils of the Sea, or other causes of "Force Majeure" fails to arrive at loading port within

contract time, the buyer will have the option of substituting another vessel to load within contract shipping period or, if none available, the buyer will have thirty days in which to berth the originally named vessel (if not lost), or another vessel, and the Seller will have to deliver the contracted for goods to such vessel without extra charge for warehousing pending shipment.

If no berthing arrangements are made by the buyer within the extended period of thirty days, the seller has the option of cancelling or closing out at a fair market price, and any loss through market difference will be at the charge of the buyer.

RULE 59.—INSURANCE. On C. I. F. sales seller shall furnish Marine Insurance Free of Particular Average for the C. I. F. invoice value of the goods plus 10%, also risks on wharfs and/or docks and/or lighters and/or other conveyances, until delivered at consignees warehouse and/or elevator within the limits of the port of discharge, for a period of not over fifteen days after final discharge from vessel.

For certain commodities, the Special Rules provide for special insurance coverings. Buyer and seller, by mutual agreement, may stipulate such forms of insurance as fit their understanding.

ALL INSURANCE SETTLEMENTS TO BE MADE AND PAYABLE IN THE U. S. A. IN U. S. CURRENCY.

RULE 60.—BANKRUPTCY. If, before the fulfillment of contract, either party shall suspend payment or become bankrupt or insolvent, all deliveries under contract may be closed out at fair market prices, or the contract may be cancelled, at the option of the solvent party, on 48 hours' notice.

RULE 61.—IMMEDIATE REPLY. Reply must be received by party making firm bid or firm offer within two hours after time message conveying such firm bid or firm offer is filed with the telegraph company.

RULE 62.—PROMPT REPLY. Reply must be received by party making bid or offer by 5 P.M. the same day. Overnight bids made or offers received must be answered by telegraph before 10 A. M. the following day, sender's time.

RULE 63.—DELIVERY AND DESPATCH OF TELEGRAMS. In case of dispute the delivery of telegrams shall be based upon the time at which the telegrams are delivered by the telegraph company, as shown by its records, and the time of despatch of telegrams shall be based upon the time filed with the telegraph company as shown by its records.

RULE 64.—Any dispute arising under contracts which cannot be settled amicably between interested parties shall immediately be submitted to arbitration before a committee selected by the San Francisco Chamber of Commerce under the Rules of the National Institute of Oilseed Products.

RULE 65.—When arbitration under these rules is applied for by either party to a contract such arbitration shall, in the absence of agreement to the contrary, be held before a committee appointed for the matter by the San Francisco Chamber of Commerce. Such arbitration will be held at the San Francisco office of the San Francisco Chamber of Commerce, under the rules of the National Institute of Oilseed Products.

RULE 66.—All communications relative to arbitration shall be addressed to the San Francisco Chamber of Commerce.

RULE 67.—Three arbitrators shall serve on each case and the agreed decision of any two shall be binding on all parties. The dissenting arbitrator shall, however, sign as dissenting thereto and may give reasons therefor.

RULE 68.—The following is the form of request for arbitration:

"The undersigned hereby requests that an arbitration be held before a committee appointed for the matter by the San Francisco Chamber of Commerce, and under the rules of the National Institute of Oilseed Products, in the matter of

_____and hereby agrees and promises to abide by the award and findings of the arbitrators, and in the event of an adverse decision, to make prompt settlement and likewise pay the fees and costs as provided for in the rules of said Institute. Arbitrators may be appointed and proceed without notice.

"Check for $50.00 for deposit on account of said arbitration fee enclosed herewith.

(signed) _____

By_____"

RULE 69.—The fee in all cases of arbitration shall be $50.00, which amount shall be deposited with the San Francisco Chamber of Commerce by each party together with application for arbitration, but the party in whose favour decision is rendered shall be entitled to a return of his deposit when the findings are forwarded to him.

RULE 70.—The arbitrators shall receive for their services from the San Francisco Chamber of Commerce such portion of the arbitration fee as the Chamber may provide.

RULE 71.—Written statements of fact, together with written arguments thereon, must be presented in quadruplicate to the San Francisco Chamber of Commerce, which shall be submitted in their entirety to the arbitrators, but no oral evidence shall be given or personal appearance of the parties permitted unless requested by the arbitrators.

RULE 72.—Immediately upon receipt thereof, the Chairman of the Chamber of Commerce shall submit a copy of the statement of fact to the respective parties to the arbitration, and each shall have the right to reply thereto, but if no such answer is made by either party within a reasonable time, it shall be considered a waiver of the right to answer.

RULE 73.—Sample, if required, shall be drawn and forwarded to the Chamber of Commerce in accordance with the Rules covering the commodity in dispute. In the event parties to an arbitration disagree as to the sample or samples to be used for arbitration, the arbitrators shall obtain same in such manner as they shall elect. The losing party shall bear any and all expenses connected with taking and forwarding samples.

RULE 74.—The findings and award of the arbitrators shall be in writing, signed by the arbitrators, fully setting forth the facts of the case and a copy thereof shall immediately be furnished the parties to the dispute.

RULE 75.—When arbitration finding is based upon samples, the samples on which arbitration was held shall, on immediate request, be returned to the owner at his expense.

RULE 76.—A member of the Institute, unless acting as agent for a disclosed principal, who refuses to submit to the San Francisco Chamber of Commerce any dispute arising out of a contract providing for arbitration under the Rules of the Institute, or who fails or refuses within reasonable time to abide by the findings and award of the arbitrators, shall be reported to the Board of Directors of the National Institute of Oilseed Products, who shall have power to act in such manner as the facts warrant, and may suspend or expel such member, reporting such action to the membership.

RULE 77.—COMMODITIES NOT COVERED BY SPECIAL RULES. Any commodities not specifically provided for in these Rules shall be treated according to the custom and usage of the trade. Provided that these General Rules shall govern insofar as applicable to the transaction.

RULE 78.—When Uniform Contracts have been approved and accepted by members of the National Institute of Oilseed Products the Institute will recognize no deviation or change in these contracts as pertains to Rules: 28, 29, 100, 101, 102, 103, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150 and 152.

# SPECIAL RULES

## COPRA

RULE 100.—DESCRIPTION AND QUALITY. Copra shall be the product from matured cocoanuts; shall be "fair merchantable" quality. According to the terms of sale it may be either: sundried, smoke dried, hot air dried, or mixed.

"Fair merchantable" copra shall be free from a noticeable admixture of copra from unripe nuts (Cocomoda), free from dirt and foreign substances. It shall not have suffered deterioration through storage.

The free fatty acids contents should not exceed 5%, and the resultant oil shall in no case be of a deeper color than 50 yellow and 9 red Lovibond Scale.

Having regard for occasional uncommon conditions of production and shipping, a tolerance of 1% free fatty acids contents will be admitted. However: if the free fatty acids contents exceed 6%, the seller shall make an allowance to the buyer of ½ of 1% of the invoice value for each 1% free fatty acids over 6%, fractions in proportion, up to and including 8%. If the free fatty acids contents exceed 8%, the seller shall make an allowance to buyer of ¾ of 1% of the invoice value for each 1% free fatty acids in excess of 8%, fractions in proportion, up to and including 10%. If the free fatty acids contents exceed 10%, the seller shall make to buyer an allowance of 1% of the invoice value for each 1% of free fatty acids in excess of 10%, fractions in proportion, up to and including 12%. If the free fatty acids contents exceed 12%, the delivery will be rejected as unmerchantable, but the buyer may exercise the option of accepting delivery at an allowance agreed upon between buyer and seller which—in no case—shall be less than the penalty established for 12% free fatty acids Copra.

RULE 101.—For the purpose of establishing quality all copra shipments shall be sampled at all United States Pacific Coast Ports officially by Messrs. CURTIS & TOMPKINS Ltd., licensed surveyors and chemists, whose sampling and analyses shall be official and binding upon both buyer and seller.

The cost of this official sampling is fixed at 8 U. S. cents per ton, buyer and seller each paying half of the cost of this sampling.

RULE 102.—QUANTITY: shall be long tons of 2240 pounds. Seller has the option of delivering 5% more or less of the contracted quantity, such surplus or deficiency to be settled as follows: on the basis of the delivered weight up to 3% at contract price, and any excess or de-

ficiency beyond this 3% at the market price of the day of arrival at Port of Discharge, this market price to be fixed by the Executive Committee of the National Institute of Oilseed Products.

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## SEEDS AND NUTS

### RULE 103.—DESCRIPTION AND GRADE

PALMKERNEL: (Named country of origin) The kernels are to be of good merchantable quality, F. A. Q. of season at time of shipment. If inferior thereto a fair allowance shall be made as ascertained in the usual way by cutting.

Any deficiency in Oil Contents of the kernels shall be allowed for by sellers, and any excess shall be paid for by buyers on the basis of 1½%, on the contract price per ton for each 1% under or over 49% or proportionately for any fraction thereof. An average sample in triplicate shall be taken and sealed up conjointly by buyers' and sellers' representatives at port of discharge before delivery, and sent to_____ a certified public chemist who shall be a member of the American Oil Chemists Society, who upon such sample (or samples) shall determine by petroleum ether the percentage of oil contents. In the case of kernels damaged by water, samples of wet kernels shall be drawn in sealed bags in the usual way for arbitration and, if required by either party, duplicate samples of such wet kernels shall be drawn in sealed bottles to be tested by a certified public chemist who shall be a member of the American Oil Chemists Society for moisture content solely for the information of the arbitrators. The sample (or samples) when delivered to the certified public chemist to become their absolute property; the charges for sampling and analyzing to be divided between buyer and sellers.

BABASSU (NUT) KERNELS: Babassu Nut Kernels shall be sold for delivery in sound merchantable conditions, and to be F. A. Q. of the current season's production and shall be commercially free of shells and foreign matter.

TUCUM: Tucum Nut Kernels shall be sold for delivery in sound merchantable condition, and to be F. A. Q. of the current season's production and shall be commercially free of shells and foreign matter.

COQUITO: Coquito Nut Kernels shall be sold for delivery in sound merchantable condition, and to be F. A. Q. of the current season's production, and shall be commercially free of shells and foreign matter.

COHUNE: Cohune Nut Kernels shall be sold for delivery in sound merchantable condition, and to be F. A. Q. of the current season's production, and shall be commercially free of shells and foreign matter.

OURICOURY: Ouricoury Nut kernels shall be sold for delivery in sound merchantable condition, and to be F. A. Q. of the current season's production, and shall be commercially free of shells and foreign matter.

MURU MURU: Muru Muru Nut Kernels shall be sold for delivery in sound merchantable condition, and to be F. A. Q. of the current season's production, and shall be commercially free of shells and foreign matter.

UCUHUBA: Ucuhuba Nut Kernels shall be sold for delivery in sound merchantable condition, and to be F. A. Q. of the current season's production, and shall be commercially free of shells and foreign matter.

MANCHURIAN HEMPSEED: The seed to be delivered to port of embarkation in merchantable condition, of the fair average quality of the season at time and place of shipment and warranted to be equal to the average for the month in which the seed is shipped, but not to contain more than 10 per cent moisture at time of loading on ocean-going vessel. Lloyds certificate as to quality and moisture content to be furnished by the seller. In the event of no average being made the arbitrators shall decide what is the fair average quality.

Should the seed on arrival at port of discharge not prove equal to the above warranties, be sea or otherwise damaged, or out of condition, this contract is not to be void, but the seed as well as the sweepings, is to be taken, with an allowance, to be fixed by agreement or by arbitration, as provided under these rules.

Any excess of admixture over 3 per cent shall be deducted from the contract price.

CHINESE RAPESEED—PURE BASIS: The seed is to be deliver at port of shipment in sound and merchantable condition, subject to any country damaged grains, and is warranted to be of the fair average quality of the season at time of shipment, such average to be decided by the standard average for the month in which the seed is shipped.

The percentage of admixture having been ascertained, non-oleaginous substances shall be considered valueless. The basis shall be pure rapeseed and the buyer shall receive an allowance equal to the percentage of admixture as ascertained. When the admixture is over 3%, the excess of 3% shall be doubled.

PERILLA SEEDS: Perilla Seeds shall be sold for delivery in sound merchantable condition, F.A.Q. of the current month's shipments, but not to exceed 8% moisture at time of loading on board ocean-going vessel. The seed is to be basis 94% pure, any impurities over 6% considered worthless and to be refunded at contract price.

LINSEED: On Linseed contracts the rules of the Linseed Association of New York are hereby adopted and made a part of the rules of the National Institute of Oilseed Products.

CASTOR SEEDS: Castor seeds are sold basis pure or 98% pure, as per arrangement, and for delivery in sound merchantable condition, F.A.Q. of season. All impurities including oleaginous admixture to be considered valueless. American Oil Chemist Society, or The Linseed Association of New York approved chemist's analyses to govern as regards admixture and impurities.

GROUND NUTS (PEANUTS): Ground nuts are sold basis pure for delivery in sound merchantable condition, but shall not contain over 8% moisture at time of shipment and to be F. A. Q. of season. All admixture to be considered valueless. American Oil Chemist Society Chemist's analysis to govern as to admixture.

MANCHURIAN SOYBEANS: The beans to be sold for delivery in sound merchantable condition, of the fair average quality of the season and warranted to be equal to the standard average for the month in which the beans are shipped.

CHINESE SESAME SEED: The seed is to be delivered in sound merchantable condition, subject to any country damaged grains in the Standard and is warranted to be of fair average quality of its description at time and place of shipment, such average to be decided by the standard average for the month in which the seed is shipped and to be free from musty smell subject to the usual slight earthy Chinese smell.

The basis shall be 98% pure. Impurities in excess of 2% considered valueless and to be refunded at contract price.

KAPOC SEEDS: Kapoc seeds shall be delivered in sound merchantable condition, not to exceed over 25% immature seeds, and to be F. A. Q. of the season.

## SEEDS AND NUTS

NOTE: *These rules covering seeds and nuts are in addition to the general rules. Specific commodity rules supersede conflicting general rules.*

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RULE 104.—DESCRIPTION OF GRADE. The description and grade of all seeds and nuts covered under these rules shall be as set forth under their description in the Special Rule No. 103.

RULE 105.—WEIGHTS. Certified public weigher's certificate and/or Transcontinental Freight Bureau weights at port of discharge will be final.

RULE 106.—STORAGE FOR BUYER'S ACCOUNT. If transfer at port of entry is delayed by buyer's failure to give forwarding instructions prior to arrival, or by reason of inability of railroads to furnish equipment, or if shipment is refused by carriers on account of railroad embargoes or Governmental regulations, buyer agrees to accept delivery ex wharf, and the goods are to be stored at buyer's expense in public warehouse, for buyer's account and risk, and paid for by sight draft attached to negotiable warehouse receipt and ex ship weight certificate. When seeds or nuts are sold in bulk and railroad cars are not available, seller shall have the option of packing in bags at expense of buyer. Before bagging and/or storing copra seller must first give buyer the opportunity of selecting warehouse and/or arranging the storage and/or bagging.

RULE 107.—LONG TONS. Unless otherwise specified it is understood that long tons of 2240 pounds are intended.

RULE 108.—PRICE IN BAGS. When price is made for merchandise in bags, it shall be understood that price is based on gross weight less tares. Bags are free to buyer.

RULE 109.—DESPATCH DISCHARGING "FULL CARGOES" SOLD EX DOCK OR EX VESSEL. When sales of full cargoes are made ex dock or ex vessel buyer shall take delivery of merchandise at the rate of, and on the conditions as specified in the bill of lading.

## VEGETABLES OILS AND VEGETABLE TALLOW

NOTE: *These specific rules for vegetable oils are in addition to the general rules set forth herein. Specific commodity rules supersede conflicting* general rules.

RULE 110.—DETERMINATION OF QUALITY. Oils or fats shall be sold quality guaranteed at point of American tender, and be unadulterated and free from substances unnatural to same, except when placed therein by any governmental authority, but such modification must be stated in the contract, and the nature of the admixtures specified.

Oils and fats must contain all their original fluid and solid fatty acids in their original proportions, and any modification must be stated in the contract.

Any claim for minor contamination must show that the physical and chemical characteristics and properties of the tendered oil have been so altered as to render it unfit for the industrial application into which the oil usually moves. The Institute recognizes the vast difference between deliberate adulteration and accidental contamination.

RULE 111.—ALLOWANCE FOR MOISTURE AND IMPURITIES. When oils are sold on the basis of moisture and impurities not foreign to the oil, a full allowance shall be made on contract price for such moisture and impurities in excess of contract stipulations.

RULE 112.—Section 1. Tares of oil in packages shall be the original marked invoice tare. In the event of tares being illegible, weighmasters may have access to the original weight certificate to determine the correct tare.

Section 2. The buyers or sellers shall be entitled to demand the stripping of 10% of the packages provided there be justification for believing tares to be excessive. The seller shall make allowance to the buyer for excess of super-tares on the following basis:

Wood barrels ..... If exceeding 2 lbs. per barrel
Steel or Iron drums ..... If exceeding 1 lb. per package

Section 3. Any claim for excess tares must be made within 15 days after delivery. The actual tares of packages must be ascertained by removing the head and draining the package thoroughly. The stripping must be done in warm place. The seller has the option of having a representative present during the operation. The cost of stripping shall be at the expense of the party making the demand.

Section 4. The tares of Tank cars shall be the actual scale weight of the empty tank car after being certified clean.

RULE 113.—In the absence of anything to the contrary, weighing charges shall be for the account of the buyer on C. I. F. sales; or for seller's on ex dock or F. O. B. tank car sales. Tank cars shall be disconnected when weighed.

RULE 114.—TIME OF WEIGHING. No weights shall be recognized as landed weights unless taken within five days after completion of discharge. Oil brought ex dock or F. O. B. cars shall be re-weighed when delivered if re-weight is demanded by buyer, but at buyer's expense.

RULE 115.—ALLOWANCE FOR FREE FATTY ACIDS. When oils are sold on basis of f.f.a. with an up and down allowance, such allowance shall be at the rate of ½ of 1% of the contract price for each 1% f.f.a., fractions in proportion.

RULE 116.—TANK CARS. Tank cars tendered on contracts either for loading to seller, or when loaded to buyers, must be of standard make and be so equipped as to permit ready loading and unloading in all kinds of weather.

RULE 117.—USE OF TANK CARS. The use of tank cars for any other purpose than that originally intended or for any other than the original destination by either party to a transaction, without the consent of the other party at interest, shall render the party so using such tank cars liable for all charges and demurrage accruing to owner or lessee of the cars.

RULE 118.—LIMITATION OF DESTINATION. Unless otherwise specified destination of seller's tank cars is limited to within the borders of the United States.

RULE 119.—DETENTION CHARGES FOR TANK CARS. Detention charges for the use of tank cars shall be according to the average renting value of tank cars for the period of the preceding three months and based on tanks of 8,000 gallons.

RULE 120.—DEMURRAGE. In addition to the detention charges payable to the owner or lessee of tank cars as per preceding rules, any demurrage charges assessed by transportation companies on empty or loaded cars shall be borne by the party responsible under the contract for such charges.

RULE 121.—LOADING BUYER'S TANKS. To avoid demurrage, Buyer's tank cars must be loaded by seller within 48 working hours of arrival at point of loading, when such arrival is in accordance with contract. Likewise, buyer must unload seller's tank cars within 48 working hours after arrival.

RULE 122.—RETURN OF EMPTY TANK CARS. Buyer shall respect the instruction of seller covering the handling of seller's tank cars, and in the event of re-sale shall require his consignee to return empty tank cars according to seller's instructions, furnishing seller with complete information.

RULE 123.—BUYER MUST FURNISH NUMBERS, ETC. Buyer furnishing tank cars must notify seller of correct numbers, initials, date of forwarding, and to supply proof of shipment without delay.

RULE 124.—NOTIFICATION OF SHIPMENT. Seller must notify buyer immediately of date of shipment of loaded tank cars, their numbers and initials, and furnish weight certificate showing track scale gross and tare weights, without delay.

RULE 125.—INSPECTION OF TANK CARS. Seller shall in all cases before loading tank cars *furnished by buyer,* inspect tank cars and where necessary, have them cleaned and repaired at buyer's expense if so authorized. Seller, having taken all reasonable precautions to insure cleanliness assumes no further responsibility therefor.

In the event it is impossible to clean buyer's tank cars suitably for carrying oil sold, and buyer is unable to furnish other cars before expiry of contract shipping period, seller may substitute other equipment and notify buyer.

RULE 126.—REPLACING LOST OR DAMAGED TANKS. In the event of cars being damaged or lost, buyer shall, within 48 hours after receipt of notice of such condition, forward other tank cars in substitution, advising seller of such forwarding, and such substitution of tank cars shall take the place of the original forwarding.

RULE 127.—ROUTING OF TANK CARS. On contracts calling for seller's tank cars, seller reserves the right of routing; when contracts call for buyer's tank cars, buyer reserves the right of routing.

RULE 128.—BUYER MUST NAME DESTINATION. When oil is sold upon terms of loading point within seller's option, in buyer's tanks but seller's routing, the buyer must furnish seller with destination before seller is required to name loading point, and specify routing.

RULE 129.—WEIGHTS. When goods are sold F. O. B. tank cars point of loading, certified public weighmaster's certificate, and/or weight certificate of the territorial weighing and inspection bureau having jurisdiction at point of loading will govern.

RULE 130.—TIME OF SHIPMENT. Shipments will be interpreted as follows, not including date of contract:

| | |
|---|---|
| Quick shipment | Within two working days. |
| Immediate shipment | Within five working days. |
| Prompt shipment | Within ten working days |

Except that General Rules 10 and 11 shall apply to overseas shipments.

This rule to apply on shipments of merchandise in packages or tank cars, and it is also to govern the forwarding of buyer's empty tank cars or—buyer's empty packages when contract calls for buyer's tank cars or packages.

The date the bill of lading is signed shall be considered as the date of shipment, this to apply to the shipment of the merchandise as well as to the forwarding of empty tank cars: provided, however, that in case the transportation company does not issue bills of lading for empty tanks, the shipper must nevertheless obtain from the transportation company acknowledgment of the forwarding of such empty tanks. Notice of the shipment of the merchandise as well as of the forwarding of empty tanks must be forwarded by the shipper to the other party at interest at the earliest possible date.

RULE 131.—DATE OF OCEAN GOING VESSEL and/or RAILROAD and/or CARRIER BILL OF LADING. The date of ocean going vessel and/or railroad and/or carrier on board bill of lading shall be evidence of time of shipment.

RULE 132.—CASUALTY CLAUSE. In all cases seller shall not be responsible for non-delivery or delay of delivery resulting from the acts of God, from the elements, or from the action of governments, or caused by strikes, fires, explosions, floods, war, riots, insurrections, lockouts, perils of the sea, embargoes, or contingencies in the course of oversea voyage or overland transportation; provided that seller must prove the direct operation of any alleged disabling circumstances, and must notify buyer of the existence of such circumstances as soon as known to him.

When goods are sold by a manufacturer or producer as of his own make, or when sold by a dealer as the product of a certain producer or manufacturer providing dealer can establish existence of covering contract, or when identified at the time of sale as a specific lot, the following conditions shall be considered as beyond seller's control:

Partial or total destruction of plant or merchandise from any cause; breakdown of machinery, war, strikes, riots, or any unlawful acts, as far as they will interfere with the manufacture or delivery of the merchandise: or the insolvency of the manufacturer or producer whose make is specifically designated in contract. The seller claiming exemption under this paragraph must notify buyer immediately, and be prepared to furnish proof of the direct opration of the alleged disabling circumstances enumerated above, without loss of time.

RULE 133.—PROOF OF CASUALTY. If seller claims any of the circumstances enumerated in Rule 132 as reason for non-shipment or for extension of time, seller must furnish a statement setting forth in

complete detail the existing disabling circumstances, such statement to be attested by a U. S. Consul (or proper local authority if no U. S. Consulate is maintained) when shipment/delivery was contemplated from a foreign country, or supported by affidavits made before local authority if shipment/delivery was contemplated from an American colony, dependency or Territory, or from a point within the U. S.

RULE 134.—PAYMENT. The terms of payment for oils and fats and waxes shall be cash against documents, unless expressed otherwise in contract.

RULE 135.—INSURANCE.

a). When vegetable oils are sold on "qualified C. I. F. terms", i.e: landed weight, quality guaranteed at destination, etc., the Marine Insurance provided by the seller/shipper shall cover the risk of leakage and contamination. At the port of discharge the buyer shall do all that is necessary, under the terms of the policy/certificate of insurance, to ascertain condition of the cargo, have the proper surveys made, present claims, where justified and necessary, and such claims when collected shall be credited to seller/shipper as his interest may appear.

b). When vegetable oils are sold *cost and freight* but "qualified" as to landed weight, quality guaranteed at destination, etc: or when sold on "qualified C. I. F. terms" upon the conditions that buyer will supply insurance at seller's expense, the buyer must provide insurance to cover leakage and contamination—and at port of discharge will proceed as set forth in paragraph a).

## RULES GOVERNING QUALITY OF VEGETABLE OILS AND VEGETABLE TALLOW

RULE 136.—VEGETABLE OILS when sold shall be designated as hydraulic pressed, expeller pressed, or a combination of hydraulic and expeller pressed, or solvent extracted.

RULE 137.—PURE RAW SOYABEAN OIL. The standard of quality shall conform to the latest standard specifications described in Rule 2 of the National Soya Bean Processors Association.

RULE 138.—FOREIGN PEANUT OIL, FAIR AVERAGE QUALITY, CRUDE. Shall be filtered or well settled, and shall be fair average quality of the season, unless otherwise specified in the contract, with a maximum free fatty acids of 2%, and a maximum of moisture and impurities of ½ of 1%; provided, however, that oil containing over 2% and not in excess of 5% free fatty acids shall be accepted with an allowance of 1½% of contract price for each 1% free fatty acids, fractions in proportion; and further provided, that oil containing moisture and impurities over ½ of 1%, and not in excess of 1%, shall be considered as good delivery by allowance at the rate of 1% for each 1% moisture and impurities, fractions in proportion; and may be rejected if moisture and impurities exceed 1½%.

RULE 139.—COCHIN TYPE COCONUT OIL. Shall not contain more than 1/10% free fatty acids, and shall have a color no darker than 10 yellow 1 red.

RULE 140.—DOMESTIC COCONUT OIL (MANILA TYPE) CRUDE. Shall not contain more than 6% free fatty acids.

RULE 141.—CRUDE HEMPSEED OIL. Shall be fair average quality of the season's production, of the season of the country in which it is pressed, the free fatty acids shall not exceed 3%, nor moisture and impurities exceed ½ of 1%.

RULE 142.—PERILLA OIL, FAIR AVERAGE QUALITY. Guaranteed non break. Free fatty acids not to exceed 2% at time of shipment. Oriental certificate of quality to be furnished by seller and considered final.

RULE 143.—RAPESEED OIL, CRUDE. Shall be pressed and of fair average quality and the free fatty acids shall not exceed 2% nor moisture and impurities exceed ½ of 1%.

RULE 144.—RAPESEED OIL GUARANTEED REFINED OR SHIRASHIME. Shall be pressed, yellow and bright and clear, and free

fatty acids shall not exceed ½ of 1%, and shall be free from moisture, sediment and sulphuric acid. The Halphen test for Cottonseed Oil shall give the negative result. Any oil not meeting the above specifications may be rejected.

RULE 145.—SESAME OIL, BASIS FAIR AVERAGE QUALITY. Contract shall specify whether hot or cold pressed; moisture and impurities shall not exceed ½ of 1%, and free fatty acids not to exceed 3%, but if oil is merchantable, buyer shall not reject, but shall receive an allowance of 1% of the invoice price for each 1% excess, fractions in proportion. Buyer has the right of rejecting delivery if free fatty acids exceed 5%. Must be sweet in flavour and odor.

RULE 146.—CHINESE WHITE VEGETABLE TALLOW. Titre shall not be under 51 degrees centigrade. Should tallow be lower in titre, seller shall make allowance to buyer at the rate of 2/10% of contract price for every 1/10 degree below titre stipulated. Should moisture and impurities exceed 1% buyer shall receive allowance of 1% of contract price fo reach 1% excess, or fractions in proportion. Unless otherwise specified, Chinese White Vegetable Tallow is understood to be packed in matted packages.

RULE 147.—PALM OIL, CRUDE. Shall be guaranteed not to be in excess of 5% free fatty acids at time of shipment as per Eastern Test. If over, an allowance of 1% of the contract price to be paid by sellers to buyers for each per cent over 5% and proportionally for any fraction thereof. Buyers to have the option of refusing delivery if over 7% at time of shipment. *Basis purity.* All moisture and impurities shall be allowed to buyers by sellers. Quality to be equal to "First Quality Sumatra" no bleached to be delivered. Oil to be free from contamination and seawater at time and place of shipment.

RULE 148.—TEASEED OIL. Shall be pure. Free fatty acids shall be as per contract and determined on arrival, unless stated to the contrary in contract. Seller shall make to buyer an allowance for free fatty acids in excess of contract stipulation at the rate of 2% of the invoice price for each 1% free fatty acid or pro-rata for fractions—unless stated to the contrary in the contract.

RULE 149.—IMPORTED REFINED COTTONSEED OILS, sold to arrive as bleachable to 20 yellow 2.5 red, using 6% of Official Fuller's Earth, shall not be rejected if bleaching to 4 red or under, but a penalty of 1/8c per pound shall be imposed, first for failure to bleach, and an additional 5 cents per hundred pounds for each 1/10 red, up to and including 3 red. Between 3.1 red and up to and including 3.5 red an additional 1/8c per pound allowance shall be made. From 3.6 red to 4 red an additional 1/8c per pound allowance shall be made. Oil not bleaching to 4 red may be rejected by the buyer or accepted with an additional allowance either mutually agreed upon or fixed by arbitration.

If negotiations result in ultimate rejection, seller must reimburse buyer immediately.

RULE 150.—TUNG OIL. Guaranteed to pass specification of the Oriental Oils Association.

## MEALS

RULE 151.—All meals shall be sold on a basis of net landed weights. Unless otherwise specified by contract the meal shall be packed in bags containing 100 pounds net weight. All bags must be tagged showing the name of the manufacturer or the importer and the guaranteed analysis, showing the minimum amount of protein, the minimum amount of fat, the maximum amount of ash and maximum amount of fiber, and any other analysis required to pass various government and state laws where it may be sold. Unless otherwise specified in the contract, sampling and analysis of meals shall be performed in accordance with the Rules and prescribed methods of the Association of Official Agricultural Chemists in effect at the time of signing the contract.

The tag on sack must state "100 pounds net weight" unless the contract should call for some other sized packing, in which case the tag should read in accordance with the terms of the contract, but the net weight must be shown on the tag on sack.

If contents of bags upon analysis show a protein deficiency, the seller shall reimburse the buyer at the contract price for such deficiencies. If analysis of the meal fails to be equal to or better than the guaranteed analysis, seller to be entirely responsible.

## DOMESTIC COTTONSEED OIL AND PEANUT OIL

RULE 152.—As per Rules of the National Cottonseed Products Association Inc.

(Name of Firm)
(Address)

# UNIFORM GENERAL CONTRACT
of the
# NATIONAL INSTITUTE OF OILSEED PRODUCTS

CLAUSE PARAMOUNT: This contract is subject to published rules of the National Institute of Oilseed Products adopted and now in force, which are hereby made a part hereof, except insofar as such rules may be specifically abrogated herein, and any dispute arising under this contract shall be settled by a Board of Arbitrators selected by the San Francisco Chamber of Commerce and to be judged according to the rules of the National Institute of Oilseed Products, and the findings of said Board will be final and binding upon all the signatories hereto.

BUYER:

SELLER:

COMMODITY:

QUALITY:

QUANTITY:

PACKING:

SHIPMENT:

PRICE:

DUTY:

PAYMENT:

INSPECTION:

WEIGHTS:

INSURANCE:

SPECIAL CONDITIONS:

| | |
|---|---|
| Buyer | Seller |
| Buyer's Order No. | Seller's Order No. |

Broker or Agent

(Name of Firm)
(Address)

# UNIFORM CONTRACT
of the
# NATIONAL INSTITUTE OF OILSEED PRODUCTS
COVERING VEGETABLE OILS IN BULK

CLAUSE PARAMOUNT: This contract is subject to published rules of the National Institute of Oilseed Products adopted and now in force, which are hereby made a part hereof. Any dispute arising under this contract shall be settled by a Board of Arbitrators selected by the San Francisco Chamber of Commerce and to be judged according to the rules of the National Institute of Oilseed Products, and the findings of said Board will be final and binding upon all the signatories hereto.

BUYER:

SELLER:

COMMODITY:

QUALITY: As per Rule 137 to and including 150—which are hereby made an irrevocable part of the contract.

QUANTITY: .....Tons of 2,240 pounds each net landed weights. Seller to have option of shipping 5% more or less on the above quantity. Such surplus or deficiency to be settled at contract price. Any excess or deficiency over 5% to be settled at the price of the day of vessel's arrival. This value to be fixed by a quorum of the Executive Committee of the National Institute of Oilseed Products unless mutually agreed upon. Each shipment to be treated as a separate contract.

SHIPMENT:

PRICE:

DUTY:

PAYMENT:

INSPECTION:

WEIGHTS:

INSURANCE:

_____ _____

Buyer Seller

_____

Broker or Agent

[Title of Court and Cause.]

## AFFIDAVIT OF LLOYD M. TWEEDT IN OPPOSITION TO NOTICE OF MOTION TO STAY THE ABOVE ENTITLED ACTION PENDING ARBITRATION PROCEEDINGS

State of California,
City and County of San Francisco—ss.

Lloyd M. Tweedt, being first duly sworn, deposes and says:

That he is one of the attorneys for Southern Cotton Oil Company, a corporation, plaintiff in the above entitled action and that he makes this affidavit for and in behalf of said plaintiff; the above entitled action was commenced on the 19th day of November, 1942 and the summons and complaint issued therein were served upon defendant Western Vegetable Oils Company, Incorporated, on the 23rd day of November, 1942; that thereafter said defendant Western Vegetable Oils Company, Incorporated secured from plaintiff herein by stipulation various extensions of time to plead to the complaint herein; that on February 1, 1943, said defendant Western Vegetable Oils Company, Incorporated, served upon plaintiff herein its answer to the complaint herein; that thereafter, to-wit, on the 3rd day of February, 1943, said defendant Western Vegetable Oils Company, Incorporated, served upon plaintiff herein a notice of motion to stay the above entitled action until an arbitration was had between said plaintiff and said defendant;

That the damage to the shipment referred to in the complaint herein occurred during the month of July, 1941; that on [72] the 19th day of January, 1942, plaintiff herein presented claim to defendant Western Vegetable Oils Company, Incorporated, for the damage referred to in the complaint herein; that eventually and prior to the filing of the complaint herein said defendant, Western Vegetable Oils Company, Incorporated, declined any and all liability for said claim.

That said defendant, Western Vegetable Oils Company, Incorporated, never demanded or requested submission of said claim or the controversy between plaintiff and said defendant for liability for said damage to arbitration prior to the filing of the complaint herein as aforesaid; that on the 29th day of January, 1943, said defendant, by and through its attorneys, Manson, Allan & Miller, for the first time served a demand on Messrs. Derby, Sharp, Quinby & Tweedt, attorneys for plaintiff herein, demanding arbitration of the controversy between the said parties. That said defendant Western Vegetable Oils Company, Incorporated, has never, prior to the filing of the complaint herein taken any steps to submit said controversy to arbitration.

Wherefore, plaintiff herein, without admitting that the controversy between said parties is a proper one for submission to arbitration under the terms and provisions of the contract between the said parties, and without admitting that said contract between said parties provides for arbitration, asserts that said defendant Western Vegetable Oils Com-

pany, Incorporated, has waived and abandoned any right it may have heretofore had to submit said controversy to arbitration, and said plaintiff prays that said defendant's notice of motion to stay proceedings be denied.

LLOYD M. TWEEDT [73]

Subscribed and sworn to before me this 13th day of February, 1943.

[Seal] KATHRYN E. STONE

Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the within Affidavit is hereby admitted this ..... day of February, 1943.

.....

Attorneys for defendant Western Vegetable Oils Company, Inc.

[Endorsed]: Filed Feb. 15, 1943. [74]

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[Title of District Court and Cause.]

AFFIDAVIT OF JOHN J. WHELAN IN OPPOSITION TO MOTION TO STAY THE ABOVE ENTITLED ACTION PENDING ARBITRATION

State of California,
City and County of San Francisco—ss.

John J. Whelan, being first duly sworn, deposes and says: That he is an attorney-at-law duly admitted to practice before the above entitled Court; that he is employed by Messrs. Derby, Sharp, Quin-

by & Tweedt, attorneys for plaintiff herein, and that he makes this affidavit for and in behalf of plaintiff herein.

That affiant had a number of conversations with Adolph [75] Schumann relative to the matters and claim set forth in the complaint herein; that the last of said conversations took place on or about the 30th day of July, 1942; that at said time, Mr. Schumann expressed a willingness to arbitrate the said dispute between plaintiff and defendant Western Vegetable Oils Company in preference to litigating said dispute, but Mr. Schumann did not at said time, or at any other time at all, in the presence of affiiant, demand or request that said dispute be submitted to arbitration; that Mr. Schumann stated to affiant that he (Mr. Schumann) did not believe that said Western Vegetable Oils Company was liable for the loss and suggested that plaintiff should proceed against the Southern Pacific Company to recover for the loss in question.

That the last written communication received by plaintiff's attorneys from defendant Western Vegetable Oils Company prior to the filing of suit herein was a letter dated June 3, 1942, a copy of which is hereunto annexed and expressly made a part hereof; that no reference to arbitration whatever is made in said letter.

That plaintiff above-named is not now and was not at the time the contract of sale referred to in the complaint herein was made, a member of the National Institute of Oilseed Products.

JOHN J. WHELAN

Subscribed and sworn to before me this 11th day of March, 1943.

[Seal] KATHRYN E. STONE

Notary Public in and for the City and County of San Francisco, State of California. [76]

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WESTERN VEGETABLE OILS COMPANY

24 California Street
San Francisco California

June 3, 1942

Derby, Sharp, Quinby & Tweedt
Merchants Exchange Building,
San Francisco, California.

Re: Southern Cotton Oil Company

Gentlemen:

We have your letter of June 2nd and had not acknowledged your letter of May 22nd as we have been waiting for certain information from the east, which we hope to have within a day or two, which has a direct bearing on this matter, and we ask that you be patient for a few days longer and we will advise you our position.

Very truly yours,
WESTERN VEGETABLE
OILS CO. INC.
By A. A. SCHUMANN

AAS:FN

(Receipt of Service.)

[Endorsed]: Filed Mar. 11, 1943. [77]

In the Southern Division of the United States District Court for the Northern District of California

No. 22373-S

SOUTHERN COTTON OIL COMPANY, a corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; WESTERN VEGETABLE OILS COMPANY, INCORPORATED, a corporation; FIRST DOE COMPANY, a corporation; SECOND DOE COMPANY, a corporation; THIRD DOE COMPANY,

Defendants.

## MEMORANDUM AND ORDER DENYING MOTION TO STAY TRIAL

Plaintiff sues defendants for damages for failure to deliver a tankcar of coconut oil shipped on July 21, 1941, pursuant to a contract between plaintiff and defendant Western Vegetable Oil Company. The oil was lost in transit. Plaintiff sues both the seller and the shipper, defendant Southern Pacific Company, because each defendant denies liability, and plaintiff does not know whose negligence, if any, caused the loss of the oil.

It is undisputed that plaintiff paid for oil which, through no fault of its own, it never received.

Defendant seller denies liability in its answer [78]

and pleads that the contract incorporated the "Published Rules and Regulations of the National Institute of Oilseed Products", and that rule 64 thereof provides for arbitration of any dispute arising under contracts made subject to the rules of that organization. Defendant moves to stay the action pending the arbitration of the controversy.

Plaintiff contends that the rule of the Institute providing for arbitration is not incorporated in the contract. The contract of sale is drawn on the seller's printed form, and the "Clause Paramount" states: "This contract is subject to the published Rules and Regulations of The National Institute of Oilseed Products and which are hereby made a part of this contract except insofar as such Rules and Regulations are modified or abrogated by this contract." (The name of the Institute is inserted by typewriter.) All the forms of uniform contracts set forth in the "Trade Rules" of this Institute contain a similar clause paramount incorporating the rules and regulations of the Institute, but also add a specific provision with relation to arbitration of disputes arising under the contract as provided for in the rules. The omission of this clause in the contract indicates that the parties intended these rules to apply to performance rather than to enforcement.

Whether or not there was a sufficient incorporation, rule 64 provides that such disputes shall be arbitrated "immediately", and rule 68 sets out "The form of request for arbitration." The loss occurred in July of 1941, claim was made in January of 1942,

and suit was not filed until November 19, 1942. Although the seller suggested that the [79] matter be arbitrated, no formal demand was made by it until after suit was filed. The seller stated in a letter dated June 19, 1942, exhibit "D" attached to an affidavit in support of its motion, that "It is a matter entirely between the Southern Cotton Oil Company and the Railroad, if we are drawn into it well and good."

The solution of the dispute does not involve an interpretation of the contract of sale. Although the contract of sale created the relationship between the seller and plaintiff, just as the contract of carriage created the relationship between the shipper and plaintiff, the action is based on negligence, not on breach of contract. The question to be determined is whether there is negligence of the seller or of the shipper or of both which caused the loss. Assuming for the moment that it was the negligence of the seller, no term of the contract, no provision for the placement of the risk of loss, would be a defense, so that the dispute is not under the contract but outside of it.

Moreover, the nature of the dispute is such that arbitration could not settle it. There is no way in which the shipper, a stranger to the contract of sale, may be forced to arbitrate the matter, and without the shipper before the board of arbitrators, it would be unable to finally determine the controversy.

If arbitration did take place, and should plaintiff obtain an award, the seller would not be prevented from proceeding against the shipper. Should de-

fendant seller receive an award, plaintiff could still proceed against the shipper, which would be entitled to bring the seller into the action; and whatever the effect of the award would be, [80] should the seller be found liable, a complicated question would arise if, after trial on the merits here, judgment went against both defendants as joint tortfeasors.

I am of the opinion that the controversy does not come within the terms of the arbitration clause, and the motion to stay is therefore denied.

It is so Ordered.

Dated: April 2, 1943.

A. F. ST. SURE
United States District Judge

[Endorsed]: Filed Apr. 2, 1943. [81]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To Southern Cotton Oil Company, a corporation, Plaintiff, and

To Messrs. Derby, Sharp, Quinby & Tweedt, its Attorneys:

To Southern Pacific Company, a corporation, and

To A. A. Jones, Esq., and
A. T. Suter, Esq., its Attorneys:

Notice Is Hereby Given that Western Vegetable

Oils Company, Incorporated, a corporation, defendant above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the judgment or order denying the Motion of Defendant Western Vegetable Oils Company, Incorporation to stay proceedings in the above cause entered in this action on April 2, 1943.

Dated: April 30, 1943.

MANSON, ALLAN & MILLER
Attorneys for appellant Western Vegetable Oils Company, Incorporated, a corporation, 808 Kohl Building, San Francisco, California.

[Endorsed]: Filed Apr. 30, 1943. [82]

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[Title of District Court and Cause.]

## COST BOND ON APPEAL

Know All Men By These Presents, That we, Western Vegetable Oils Company, Incorporated, a corporation, as principal, and United States Fidelity and Guaranty Company, as surety, acknowledge ourselves to be jointly indebted to Southern Cotton Oil Company, a corporation, and Southern Pacific Company, a corporation, appellees in the above cause in the sum of Two Hundred and Fifty Dollars ($250.00), conditioned that whereas on the 2nd day of April, A. D. 1943 in the District Court of the

United States, for the Northern District of California, Southern Division, in a suit depending in that Court, wherein Southern Cotton Oil Company, a corporation, was plaintiff and Southern Pacific Company, a corporation, and Western Vegetable Oils Company, Incorporated, a corporation, were defendants, numbered on the Civil Docket as 22373-S, an order or judgment was rendered against the said Western Vegetable Oils Company, Incorporated, a corporation, denying the motion of defendant Western Vegetable Oils Company, Incorporated, a corporation, [83] to stay proceedings in said cause, having filed or being about to file in the office of the Clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

Now, the condition of the above obligation is such that if the said appellant Western Vegetable Oils Company, Incorporated, a corporation, shall prosecute its appeal to effect and answer all costs, if the Appeal is dismissed or the judgment affirmed, or if such costs as the Appellate Court may award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

It being expressly understood and agreed by the undersigned surety, party hereto, that, in case of a breach of any condition hereof, this Court may, upon notice to it, of not less than ten days, proceed summarily in the action in which the foregoing undertaking was given to ascertain the amount which the undersigned surety is bound to pay on account of

such breach, and render judgment therefore against it and award execution therefor.

In Witness Whereof, the undersigned principal and surety have hereunto caused the foregoing cost bond on appeal to be executed by its respective officers thereunto duly authorized this 30th day of April, 1943.

[Seal] WESTERN VEGETABLE OILS COMPANY, INCORPORATED, a corporation

By RALPH J. BOOMER
Its Vice President

By THOS. A. ALLAN
Its Secretary

[Seal] UNITED STATES FIDELITY AND GUARANTY COMPANY

By ANN MORRISON
Its Attorney in Fact

Approved this ..... day of April, 1943.

.....
Judge

(Acknowledgment of surety.)

[Endorsed]: Filed Apr. 30, 1943. [84]

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[Title of District Court and Cause.]

## STAY BOND ON APPEAL

Know All Men by These Presents: That we, Western Vegetable Oils Company, Incorporated, a

corporation, as principal, and United States Fidelity and Guaranty Company, as surety, acknowledge ourselves to be jointly indebted to Southern Cotton Oil Company, a corporation, and Southern Pacific Company, a corporation, appellees, in the above cause in the sum of $250.00, conditioned that

Whereas, on the 2nd day of April A. D. 1943 in the District Court of the United States for the Northern District of California, Southern Division, in an action depending in that Court wherein Southern Cotton Oil Company, a corporation, was plaintiff and Southern Pacific Company, a corporation, and Western Vegetable Oils Company, Incorporated, a corporation, were defendants, numbered on the civil docket as 22373-S a judgment or order was rendered against [85] the said Western Vegetable Oils Company, Incorporated, a corporation, denying the motion of said defendant Western Vegetable Oils Company, Incorporated, a corporation, to stay proceedings in said cause until an arbitration has been had; and

Whereas, said defendant Western Vegetable Oils Company, Incorporated, a corporation, has filed in the office of the Clerk of said District Court a notice of appeal to the United States Circuit of Appeals for the Ninth Circuit and a cost bond on said appeal; and

Whereas, the said Western Vegetable Oils Company, Incorporated, a corporation, desires a stay of all proceedings in said cause; and

Whereas, the above entitled Court did on the 12th day of May, 1943 duly make its order herein staying all proceedings in said cause until the final determination of the said appeal from said judgment or order refusing to stay proceedings in said cause, upon the filing of a stay bond in said cause in the sum of $250.00 conditioned to pay all damages suffered by appellees, Southern Cotton Oil Company, a corporation, and Southern Pacific Company, a corporation, by reason of the said stay of proceedings in said cause on said appeal.

Now, Therefore, the condition of the above obligation is such that if the said appellant, Western Vegetable Oils Company, Incorporated, a corporation, shall prosecute its appeal to effect and pay all damages suffered by appellees, Southern Cotton Oil Company, a corporation, and Southern Pacific Company, a corporation, by reason of the said stay of proceedings on said appeal if the appeal is dismissed or the judgment or order appealed from is affirmed, then the above obligation is void, else to remain in full force and effect.

It being expressly understood and agreed by the undersigned surety, party hereto, that, in case of a breach of any [86] condition hereof, this Court may, upon notice *ot* it, of not less than ten days, proceed summarily in the action in which the foregoing undertaking was given to ascertain the amount which the undersigned surety is bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

In Witness Whereof, the undersigned principal and surety have hereunto caused the foregoing stay bond to be executed by its respective officers thereunto duly authorized this 12th day of May, 1943.

WESTERN VEGETABLE OILS COMPANY, INCORPORATED, a corporation

[Seal] By A. SCHUMANN
Its President

By THOS. A. ALLAN
Its Secretary

State of California
City and County of San Francisco—ss.

On this Twelfth day of May in the year One Thousand Nine Hundred and forty-three before me, Edith Goewey a Notary Public, in and for the City and County of San Francisco, State of California, residing therein duly commissioned and sworn, personally appeared A. Schumann and Thos. A. Allan known to me to be the President and Secretary—respectively of the corporation described in and that executed the within instrument, and also known to me to be the person or persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] EDITH GOEWEY
Notary Public in and for the City and County of San Francisco, State of California

My Commission Expires December 23, 1944.

UNITED STATES FIDELITY AND GUARANTY COMPANY

[Seal] By ERNEST W. COPELAND
Its Attorney-in-Fact

State of California,
City and County of San Francisco—ss.

On this 12th day of May in the year one thousand nine hundred and forty three before me George B. Gillin a Notary Public in and for the City and County of San Francisco, personally appeared Ernest W. Copeland known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that (she) he subscribed the name of the United

States Fidelity and Guaranty Company thereto as surety, and his own name as Attorney-in-fact.

[Seal] GEORGE B. GILLIN
Notary Public in and for the City and County of San Francisco, State of California

My Commission Expires December 24, 1946.

Approved this 12th day of May, 1943.

A. F. ST. SURE
Judge

[Endorsed]: Filed May 13, 1943. [87]

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[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Western Vegetable Oils Company, Incorporated, a corporation, one of the defendants in the above-entitled action, in accordance with Rule 75 of the Federal Rules of Civil Procedure, hereby designates the complete record, proceedings and evidence in the above-entitled cause to be contained in the record on appeal from the judgment or order denying said defendant's motion to stay proceedings in the above-entitled cause.

Dated: May 7, 1943.

MANSON, ALLAN & MILLER

Attorneys for defendant Western Vegetable Oils Company, Incorporated, a corporation.

808 Kohl Building

San Francisco, California.

[88]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

State of California

City and County of San Francisco.—ss.

Thos. A. Allan, being first duly sworn, deposes and says:

That he is one of the attorneys for defendant Western Vegetable Oils Company, Incorporated, a corporation, in the above-entitled action; that on the 10th day of May, 1943 he personally deposited in the United States post office at San Francisco, California, full true and correct copies of the foregoing Designation of Record on Appeal in sealed envelopes with first class postage thereon fully prepaid, one thereof directed and addressed to the attorneys for the plaintiff, Messrs. Derby, Sharp, Quinby & Tweedt, [89] 1000 Merchants Exchange Building, San Francisco, California, which was their last known address, and the other thereof di-

rected and addressed to the attorneys for defendant Southern Pacific Company, a corporation, A. A. Jones, Esq. and A. T. Suter, Esq., 65 Market Street, San Francisco, California, which was their last known address.

THOS. A. ALLAN

Subscribed and sworn to before me this 10th day of May, 1943.

[Seal] EDITH GOEWEY

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires December 23, 1944.

[Endorsed]: Filed May 11, 1943. [90]

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[Title of District Court and Cause.]

## STIPULATION AND DESIGNATION AS TO RECORD ON APPEAL

It is hereby stipulated and agreed that the record on appeal from the judgment and order made on April 2, 1943 denying the motion of defendant, Western Vegetable Oils Company, Incorporated, a corporation, to stay the trial shall consist of the following:

1. Complaint.
2. Answer of defendant, Southern Pacific Company, a corporation.
3. Answer of Western Vegetable Oils Company, Incorporated, a corporation.

4. Notice of Motion to Stay Trial Until Arbitration had.
5. Affidavit of Adolph Schumann in support of motion to stay. [91]
6. Affidavit of Lloyd M. Tweedt in opposition to notice of motion to stay.
7. Affidavit of John J. Whelan in opposition to notice of motion to stay.
8. Memorandum and order denying motion to stay.
9. Notice of Appeal.
10. Cost of Bond on Appeal.
11. Stay Bond on Appeal.
12. Designation of Record on Appeal.
13. This Stipulation and Designation of Record on Appeal.

which are hereby designated as the record to be contained in the record on said appeal in accordance with Rule 75 of the Federal Rules of Procedure.

Dated: May 11, 1943.

MANSON, ALLAN & MILLER
Attorneys for Defendant and Appellant, Western Vegetable Oils Company, Incorporated, a corporation.

DERBY, SHARP, QUINBY & TWEEDT
Attorneys for Plaintiff and Appellee, Southern Cotton Oil Company, a corporation.

A. A. JONES
A. T. SUTER
Attorneys for Defendant and Appellee, Southern Pacific Company, a corporation.

[Endorsed]: Filed May 18, 1943. [92]

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District Court of the United States
Northern District of California

## CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 92 pages, numbered from 1 to 92, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Southern Cotton Oil Company, a corp., Plaintiff, vs. Southern Pacific Company, a corp., et al., Defendant. No. 22373-S., as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeals is the sum of Five-dollars and seventy-five-cents ($5.75) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 7th day of June A. D. 1943.

[Seal] WALTER B. MALING
Clerk
WM. J. CROSBY
Deputy Clerk [93]

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[Endorsed]: No. 10455. United States Circuit Court of Appeals for the Ninth Circuit. Western Vegetable Oils Company, Incorporated, a Corporation, Appellant vs. Southern Cotton Oil Company, a Corporation, Southern Pacific Company, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed: June 8, 1943.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10455

SOUTHERN COTTON OIL COMPANY,
a corporation,

Appellee,

vs.

SOUTHERN PACIFIC COMPANY
a corporation,

Appellee,

WESTERN VEGETABLE OILS COMPANY, INCORPORATED, a corporation,

Appellant.

## STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED

Western Vegetable Oils Company, Incorporated, appellant, files the following statement of the points on which it intends to rely on its appeal from the order entered by the District Court herein on the 2nd day of April, 1943 denying Western Vegetable Oils Company, Incorporated's motion to stay proceedings in said District Court in the above-entitled action until arbitration has been had.

Appellant states:

I.

The controversy between the parties to the above-

entitled action which is the subject matter of said action arises under a written contract between Southern Cotton Oil Company, plaintiff herein, and Western Vegetable Oils Company, Incorporated, one of the defendants herein, evidencing a transaction involving commerce containing a written provision to settle by arbitration controversies thereafter arising out of the contract or the refusal to perform the whole or any part thereof.

II.

The written provisions in said contract providing for arbitration is valid, enforceable and irrevocable and was at the time of the commencement of the above-entitled action, and now is, in full force and effect.

III.

The Controversy which is the subject matter of the above-entitled action is a controversy which is referable to arbitration under the terms of said contract and is required by the terms of said contract to be submitted to arbitration in the manner provided in said contract.

IV.

The above-entitled action brought by Southern Cotton Oil Company, plaintiff herein, and the trial of said action, must be stayed by the District Court in which such action is brought until such arbitration has been had, upon the application of Western Vegetable Oils Company, Incorporated for a stay of such proceedings in said action until such arbitration may be had.

V.

Western Vegetable Oils Company, Incorporated has not waived its right to such arbitration of said controversy under said contract, having pleaded the existence of said contract providing for such arbitration in its answer to the complaint of plaintiff, Southern Cotton Oil Company, on file herein and having made its motion for a stay of said action until such arbitration may be had.

VI

The District Court has the power and the duty to stay said action and the trial thereof upon the application of Western Vegetable Oils Company, Incorporated for such a stay, and the existence of a party to said action who is not a party to said contract does not deprive the District Court of the power nor relieve the District Court of the duty to grant said stay of said action.

Appellant Western Vegetable Oils Company, Incorporated hereby designates the complete record filed in said cause in the above-entitled Court as the record for printing herein.

Dated: June 16th, 1943.

MANSON, ALLAN & MILLER
Attorneys for Appellant
Western Vegetable Oils Company, Incorporated, a corporation.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF MAILING

State of California
City and County of San Francisco—ss.

Thos. A. Allan, being first duly sworn, deposes and says:

That he is one of the attorneys for appellant Western Vegetable Oils Company, Incorporated, a corporation, in the above-entitled action: that on the 16th day of June, 1943 he personally deposited in the United States post office at San Francisco, California, a full true and correct copy of the foregoing Statement of Points on which appellant intends to rely on appeal and Designation of Parts of the Record to be printed in sealed envelopes with first class postage thereon fully prepaid, one thereof directed and addressed to the attorneys for Appellee Southern Cotton Oil Company, Messrs. Derby, Sharp, Quinby & Tweedt, 1000 Merchants Exchange Building, San Francisco, California, which was their last known address, and the other thereof directed and addressed to the attorneys for Appellee Southern Pacific Company, a corporation, A. A. Jones, Esq. and A. T. Suter., Esq., 65 Market Street, San Francisco, California, which was their last known address.

THOS. A. ALLAN

Subscribed and sworn to before me this 16th day of June, 1943.

[Seal] EDITH GOEWEY

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires December 23, 1944.

[Endorsed]: Filed Jun. 17, 1943.